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RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

UNITED STATES OF AMERICA v. CARL KRAUCH ET AL. (CASE VI)

AUGUST 14, 1947-JULY 30, 1948

Roll 101

Other Items

Defense Briefs, ter Meer-Wurster
(English)

Defense Closing Statement
(German)

Defense Briefs on Fundamental Legal Issues,
Dynamit Aktiengesellschaft, and Degesch
(German)



THE NATIONAL ARCHIVES
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GENERAL SERVICES ADMINISTRATION

WASHINGTON: 1976

INTRODUCTION

On the 113 rolls of this microfilm publication are reproduced the records of Case VI, *United States of America v. Carl Krauch et al.* (I. G. Farben Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal (IMT) held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs and statements, and defendants' final pleas as well as prosecution and defense exhibits and document books in one language or the other. Also included are minute books, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 43 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. Prosecution statements and briefs are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. Unbound prosecution exhibits, numbered 1-2270 and 2300-2354, are essentially those documents from various Nuernberg record series, particularly the NI (Nuernberg Industrialist) Series, and other sources offered in evidence by the prosecution in this case. Defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically, along with two groups of exhibits submitted in the general interest of all defendants. Both prosecution and defense document books consist of full or partial translations of exhibits into English. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

Minute books, in two bound volumes, summarize the transcripts. The official court file, in nine bound volumes, includes the progress docket, the indictment, and amended indictment and the service thereof; applications for and appointments of defense counsel and defense witnesses and prosecution comments thereto; defendants' application for documents; motions and reports; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Defendants' clemency petitions, in three bound volumes, were directed to the military governor, the Judge Advocate General, and the U.S. District Court for the District of Columbia. The finding aids summarize transcripts, exhibits, and the official court file.

Case VI was heard by U.S. Military Tribunal VI from August 14, 1947, to July 30, 1948. Along with records of other Nuernberg

and Far East war crimes trials, the records of this case are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The I. G. Farben Case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weizsaecker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Authority for the proceedings of the IMT against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 1, 1943; Executive Order 9547 of May 2, 1945; the London Agreement of August 8, 1945; the Berlin Protocol of October 6, 1945; and the IMT Charter.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. Procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the IMT and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.

Formation of the I. G. Farben Combine was a stage in the evolution of the German chemical industry, which for many years led the world in the development, production, and marketing of organic dyestuffs, pharmaceuticals, and synthetic chemicals. To control the excesses of competition, six of the largest chemical firms, including the Badische Anilin & Soda Fabrik, combined to form the Interessengemeinschaft (Combine of Interests, or Trust) of the German Dyestuffs Industry in 1904 and agreed to pool technological and financial resources and markets. The two remaining chemical firms of note entered the combine in 1916. In 1925 the Badische Anilin & Soda Fabrik, largest of the firms and already the majority shareholder in two of the other seven companies, led in reorganizing the industry to meet the changed circumstances of competition in the post-World War markets by changing its name to the I. G. Farbenindustrie Aktiengesellschaft, moving its home office from Ludwigshafen to Frankfurt, and merging with the remaining five firms.

Farben maintained its influence over both the domestic and foreign markets for chemical products. In the first instance the German explosives industry, dependent on Farben for synthetically produced nitrates, soon became subsidiaries of Farben. Of particular interest to the prosecution in this case were the various agreements Farben made with American companies for the exchange of information and patents and the licensing of chemical discoveries for foreign production. Among the trading companies organized to facilitate these agreements was the General Anilin and Film Corp., which specialized in photographic processes. The prosecution charged that Farben used these connections to retard the "Arsenal of Democracy" by passing on information received to the German Government and providing nothing in return, contrary to the spirit and letter of the agreements.

Farben was governed by an Aufsichtsrat (Supervisory Board of Directors) and a Vorstand (Managing Board of Directors). The Aufsichtsrat, responsible for the general direction of the firm, was chaired by defendant Krauch from 1940. The Vorstand actually controlled the day-to-day business and operations of Farben. Defendant Schmitz became chairman of the Vorstand in 1935, and 18 of the other 22 original defendants were members of the Vorstand and its component committees.

Transcripts of the I. G. Farben Case include the indictment of the following 24 persons:

Otto Ambros: Member of the Vorstand of Farben; Chief of Chemical Warfare Committee of the Ministry of Armaments and War Production; production chief for Buna and poison gas; manager of Auschwitz, Schkopau, Ludwigshafen, Oppau, Gendorf, Dyhernfurth, and Falkenhagen plants; and Wehrwirtschaftsfuehrer.

Max Brueggemann: Member and Secretary of the Vorstand of Farben; member of the legal committee; Deputy Plant Leader of the Leverkusen Plant; Deputy Chief of the Sales Combine for Pharmaceuticals; and director of the legal, patent, and personnel departments of the Works Combine, Lower Rhine.

Ernst Buerger: Member of the Vorstand of Farben; Chief of Works Combine, Central Germany; Plant Leader at the Bitterfeld and Wolfen-Farben plants; and production chief for light metals, dyestuffs, organic intermediates, plastics, and nitrogen at these plants.

Heinrich Bueteftisch: Member of the Vorstand of Farben; manager of Leuna plants; production chief for gasoline, methanol, and chlorine electrolysis production at Auschwitz and Moosbierbaum; Wehrwirtschaftsfuehrer; member of the Himmler Freundeskreis (circle of friends of Himmler); and SS Obersturmbannfuehrer (Lieutenant Colonel).

Walter Duerrfeld: Director and construction manager of the Auschwitz plant of Farben, director and construction manager of the Monowitz Concentration Camp, and Chief Engineer at the Leuna plant.

Fritz Gajewski: Member of the Central Committee of the Vorstand of Farben, Chief of Sparte III (Division III) in charge of production of photographic materials and artificial fibers, manager of "Agfa" plants, and Wehrwirtschaftsfuehrer.

Heinrich Gattineau: Chief of the Political-Economic Policy Department, "WIPO," of Farben's Berlin N.W. 7 office; member of Southeast Europe Committee; and director of A.G. Dynamit Nobel, Pressburg, Czechoslovakia.

Paul Haeftiger: Member of the Vorstand of Farben; member of the Commercial Committee; and Chief, Metals Departments, Sales Combine for Chemicals.

Erich von der Heyde: Member of the Political-Economic Policy Department of Farben's Berlin N.W. 7 office, Deputy to the Chief of Intelligence Agents, SS Hauptsturmfuehrer, and member of the WI-RUE-AMT (Military Economics and Armaments Office) of the Oberkommando der Wehrmacht (OKW) (High Command of the Armed Forces).

Heinrich Hoerlein: Member of the Central Committee of the Vorstand of Farben; chief of chemical research and development of vaccines, sera, pharmaceuticals, and poison gas; and manager of the Elberfeld Plant.

Max Ilgner: Member of the Vorstand of Farben; Chief of Farben's Berlin N.W. 7 office directing intelligence, espionage, and propaganda activities; member of the Commercial Committee; and Wehrwirtschaftsfuehrer.

Friedrich Jaehne: Member of the Vorstand of Farben; chief engineer in charge of construction and physical plant development; Chairman of the Engineering Committee; and Deputy Chief, Works Combine, Main Valley.

August von Knieriem: Member of the Central Committee of the Vorstand of Farben; Chief Counsel of Farben; and Chairman, Legal and Patent Committees.

Carl Krauch: Chairman of the Aufsichtsrat of Farben and Generalbevollmaechtigter fuer Sonderfragen der Chemischen Erzeugung (General Plenipotentiary for Special Questions of Chemical Production) on Goering's staff in the Office of the 4-Year Plan.

Hans Kuehne: Member of the Vorstand of Farben; Chief of the Works Combine, Lower Rhine; Plant Leader at Leverkusen, Elberfeld, Uerdingen, and Dormagen plants; production chief for inorganics, organic intermediates, dyestuffs, and pharmaceuticals at these plants; and Chief of the Inorganics Committee.

Hans Kugler: Member of the Commercial Committee of Farben; Chief of the Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Greece, Bulgaria, Turkey, Czechoslovakia, and Austria; and Public Commissar for the Falkenau and Aussig plants in Czechoslovakia.

Carl Lautenschlaeger: Member of the Vorstand of Farben; Chief of Works Combine, Main Valley; Plant Leader at the Hoechst, Griesheim, Mainkur, Gersthofen, Offenbach, Eystrup, Marburg, and Neuhausen plants; and production chief for nitrogen, inorganics, organic intermediates, solvents and plastics, dyestuffs, and pharmaceuticals at these plants.

Wilhelm Mann: Member of the Vorstand of Farben, member of the Commercial Committee, Chief of the Sales Combine for Pharmaceuticals, and member of the SA.

Fritz ter Meer: Member of the Central Committee of the Vorstand of Farben; Chief of the Technical Committee of the Vorstand that planned and directed all of Farben's production; Chief of Sparte II in charge of production of Buna, poison gas, dyestuffs, chemicals, metals, and pharmaceuticals; and Wehrwirtschaftsfuehrer.

Heinrich Oster: Member of the Vorstand of Farben, member of the Commercial Committee, and manager of the Nitrogen Syndicate.

Hermann Schmitz: Chairman of the Vorstand of Farben, member of the Reichstag, and Director of the Bank of International Settlements.

Christian Schneider: Member of the Central Committee of the Vorstand of Farben; Chief of Sparte I in charge of production of nitrogen, gasoline, diesel and lubricating oils, methanol, and organic chemicals; Chief of Central Personnel Department, directing the treatment of labor at Farben plants; Wehrwirtschaftsfuehrer; Hauptabwehrbeauftragter (Chief of Intelligence Agents); Hauptbetriebsfuehrer (Chief of Plant Leaders); and supporting member of the Schutzstaffeln (SS) of the NSDAP.

Georg von Schnitzler: Member of the Central Committee of the Vorstand of Farben, Chief of the Commercial Committee of the Vorstand that planned and directed Farben's domestic and foreign sales and commercial activities, Wehrwirtschaftsfuehrer (Military Economy Leader), and Hauptsturmfaehrer (Captain) in the Sturmabteilungen (SA) of the Nazi Party (NSDAP).

Carl Wurster: Member of the Vorstand of Farben; Chief of the Works Combine, Upper Rhine; Plant Leader at Ludwigshafen and Oppau plants; production chief for inorganic chemicals; and Wehrwirtschaftsfuehrer.

The prosecution charged these 24 individual staff members of the firm with various crimes, including the planning of aggressive war through an alliance with the Nazi Party and synchronization of Farben's activities with the military planning of the German High Command by participation in the preparation of the 4-Year Plan, directing German economic mobilization for war, and aiding in equipping the Nazi military machines.¹ The defendants also were charged with carrying out espionage and intelligence activities in foreign countries and profiting from these activities. They participated in plunder and spoliation of Austria, Czechoslovakia, Poland, Norway, France, and the Soviet Union as part of a systematic economic exploitation of these countries. The prosecution also charged mass murder and the enslavement of many thousands of persons particularly in Farben plants at the Auschwitz and Monowitz concentration camps and the use of poison gas manufactured by the firm in the extermination

¹ The trial of defendant Brueggemann was discontinued early during the proceedings because he was unable to stand trial on account of ill health.

of millions of men, women, and children. Medical experiments were conducted by Farben on enslaved persons without their consent to test the effects of deadly gases, vaccines, and related products. The defendants were charged, furthermore, with a common plan and conspiracy to commit crimes against the peace, war crimes, and crimes against humanity. Three defendants were accused of membership in a criminal organization, the SS. All of these charges were set forth in an indictment consisting of five counts.

The defense objected to the charges by claiming that regulations were so stringent and far reaching in Nazi Germany that private individuals had to cooperate or face punishment, including death. The defense claimed further that many of the individual documents produced by the prosecution were originally intended as "window dressing" or "howling with the wolves" in order to avoid such punishment.

The tribunal agreed with the defense in its judgment that none of the defendants were guilty of Count I, planning, preparation, initiation, and waging wars of aggression; or Count V, common plans and conspiracy to commit crimes against the peace and humanity and war crimes.

The tribunal also dismissed particulars of Count II concerning plunder and exploitation against Austria and Czechoslovakia. Eight defendants (Schmitz, von Schnitzler, ter Meer, Buergin, Haeffliger, Ilgner, Oster, and Kugler) were found guilty on the remainder of Count II, while 15 were acquitted. On Count III (slavery and mass murder), Ambros, Bueteftisch, Duerrfeld, Krauch, and ter Meer were judged guilty. Schneider, Bueteftisch, and von der Heyde also were charged with Count IV, membership in a criminal organization, but were acquitted.

The tribunal acquitted Gajewski, Gattineau, von der Heyde, Hoerlein, von Knieriem, Kuehne, Lautenschlaeger, Mann, Schneider, and Wurster. The remaining 13 defendants were given prison terms as follows:

<u>Name</u>	<u>Length of Prison Term (years)</u>
Ambros	8
Buergin	2
Bueteftisch	6
Duerrfeld	8
Haeffliger	2
Ilgner	3
Jaehne	1 1/2
Krauch	6
Kugler	1 1/2
Oster	2
Schmitz	4
von Schnitzler	5
ter Meer	7

All defendants were credited with time already spent in custody.

In addition to the indictments, judgments, and sentences, the transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty) and opening statements of both defense and prosecution.

The English-language transcript volumes are arranged numerically, 1-43, and the pagination is continuous, 1-15834 (page 4710 is followed by pages 4710(1)-4710(285)). The German-language transcript volumes are numbered 1a-43a and paginated 1-16224 (14a and 15a are in one volume). The letters at the top of each page indicate morning, afternoon, or evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Two commission hearings are included in the transcripts: that for February 7, 1948, is on pages 6957-6979 of volume 20 in the English-language transcript, while that for May 7, 1948, is on pages 14775a-14776 of volume 40a in the German-language transcript. In addition, the prosecution made one motion of its own and, with the defense, six joint motions to correct the English-language transcripts. Lists of the types of errors, their location, and the prescribed corrections are in several volumes of the transcripts as follows:

- First Motion of the Prosecution, volume 1
- First Joint Motion, volume 3
- Second Joint Motion, volume 14
- Third Joint Motion, volume 24
- Fourth Joint Motion, volume 29
- Fifth Joint Motion, volume 34
- Sixth Joint Motion, volume 40

The prosecution offered 2,325 prosecution exhibits numbered 1-2270 and 2300-2354. Missing numbers were not assigned due to the difficulties of introducing exhibits before the commission and the tribunal simultaneously. Exhibits 1835-1838 were loaned to an agency of the Department of Justice for use in a separate matter, and apparently No. 1835 was never returned. Exhibits drew on a variety of sources, such as reports and directives as well as affidavits and interrogations of various individuals. Maps and photographs depicting events and places mentioned in the exhibits are among the prosecution resources, as are publications, correspondence, and many other types of records.

The first item in the arrangement of prosecution exhibits is usually a certificate giving the document number, a short description of the exhibits, and a statement on the location of the original document or copy of the exhibit. The certificate is followed by the actual prosecution exhibit (most are photostats,

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but a few are mimeographed articles with an occasional carbon of the original). The few original documents are often affidavits of witnesses or defendants, but also ledgers and correspondence, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
322	NI 5140	1558	NI 11411
918	NI 6647	1691	NI 12511
1294	NI 14434	1833	NI 12789
1422	NI 11086	1886	NI 14228
1480	NI 11092	2313	NI 13566
1811	NI 11144		

In rare cases an exhibit is followed by a translation; in others there is no certificate. Several of the exhibits are of poor legibility and a few pages are illegible.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, Reichgesetzblatt excerpts, photographs, and other items. The 4,257 exhibits for the 23 defendants are arranged by name of defendant and thereunder by exhibit number. Individual exhibits are preceded by a certificate wherever available. Two sets of exhibits for all the defendants are included.

Translations in each of the prosecution document books are preceded by an index listing document numbers, biased descriptions, and page numbers of each translation. These indexes often indicate the order in which the prosecution exhibits were presented in court. Defense document books are similarly arranged. Each book is preceded by an index giving document number, description, and page number for every exhibit. Corresponding exhibit numbers generally are not provided. There are several unindexed supplements to numbered document books. Defense statements, briefs, pleas, and prosecution briefs are arranged alphabetically by defendant's surname. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

At the beginning of roll 1 key documents are filmed from which Tribunal VI derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the IMT Charter, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of members of the tribunal and counsels. These are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by the minute book, consisting of summaries of the daily proceedings, thus providing an additional finding aid for the transcripts. Exhibits are listed in an index that notes the

type, number, and name of exhibit; corresponding document book, number, and page; a short description of the exhibit; and the date when it was offered in court. The official court file is summarized by the progress docket, which is preceded by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of the English-language document books.

The records of the I. G. Farben Case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the IMT, T988; NI (Nuernberg Industrialist) Series, T301; NM (Nuernberg Miscellaneous) Series, M-936; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; NP (Nuernberg Propaganda) Series, M942; WA (undetermined) Series, M946; and records of the Brandt case, M887; the Milch Case, M888; the Altstoetter case, M889; the Pohl Case, M890; the Flick Case, M891; the List case, M893; the Greifelt case, M894; and the Ohlendorf case, M895. In addition, the record of the IMT at Nuernberg has been published in the 42-volume *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published in 15 volumes as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (Washington). The Audiovisual Archives Division of the National Archives and Records Service has custody of motion pictures and photographs of all 13 trials and sound recordings of the IMT proceedings.

Martin K. Williams arranged the records and, in collaboration with John Mendelsohn, wrote this introduction.

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Roll 101

Target 1

Defense Briefs, ter Meer-Wurster

(English)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Case 6
Defense

Military Tribunal No. VI

Case No. VI

CLOSING-BRIEF

for

Dr. Fritz ter Meer

Presented

by

Dr. Erich Berndt

Karl Bornemann

Defense Counsel.

Seung



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A. The life and political opinions of the defendant Dr. ter Meer.

The Defense considers it necessary to give a short summary of the professional career and political attitude of the defendant before it enters into the different points of the indictment. This appears the more necessary, in that the Prosecution during the trial asked several defendants about their political attitude. Moreover, the Defense is of ^{the} opinion that from the political attitude of the defendant, it is possible to draw conclusions concerning his personal attitude to the various criminal acts with which the defendant is charged by the Prosecution. For, when it is proved that he was no follower of National Socialism and that he also sufficiently well demonstrated this negative attitude towards the outside world, it will hardly be found credible that the defendant was capable of committing the crimes asserted by the prosecution. The defense will prove that the defendant Dr. ter Meer was a convinced opponent of National Socialism and that the furtherance of Hitler's aggressive tendencies was just as far from him as were plundering and support of a slave labor program.

Trial Brief ter Meer

I. Ter Meer gave details of his career in
Prosecution Exh. 311, NI-5188, Book 11, Engl. p. 151, German p. 173.
Reference may be made to this as well as to his personal inter-
rogation on 10 February 1948.

Interrogation ter Meer, Transcript English pages 6719ff,
German pages 6840ff.

Only two points need be emphasized:

1) Ter Meer has proved during his life that he has always had
extremely social tendencies and was attached to the workers. He
grew up in his father's factory in the closest association with them.

Exh. ter Meer, 2;	Doc. 4;	Book I, page 15
" " " 4;	" 6;	" I, " 20
" " " 3;	" 5;	" I, " 17
" " " 5;	" 7;	" I, " 13
" " " 1;	" 3;	" I, " 11.

He always maintained this social-mindedness, even as president of
the District Employers' Association of the Chemical Industry where
he favoured a relationship of mutual confidence between the association
and the various Trade Unions and also kept the work of the Asso-
ciation ^{free} from every kind of Party political influence.

Exh. ter Meer 8, Doc. 10, Book I, page 31.

The same applies also to his later activities as honorary head of
the Trade Association of the Chemical Industry, where he warmly
supported the interests under his charge.

Exh. ter Meer 33, Doc. 16, Book I, page 52.

Ter Meer also showed the same kind of social-mindedness towards the
Italian workers (cf. page 114). It cannot be believed of a man
with such social tendencies ^{that he is} capable of assisting in the enforcement
of slave labor.

2) Both in his youth and in his mature years ter Meer often worked for long periods abroad, especially in the United States. Compare on this point his examination of 10 February 1948,

Examination for Meer, Transcr. Engl. p. 6719, German page 6841.
Thus he learned to know the economic power of other countries, in particular that of the United States, so that, precisely in his quality as a technical expert he is hardly likely to have overlooked the superior force of the other side. By this also his participation in the planning of an aggressive war would appear to be excluded. This is also confirmed by a statement of the occasion of a conference of the Army Ordnance Office, where he pointed out that the United States of America were easily able to produce ten times the quantities of the products desired by the German Army and would one day throw this economic overweight into the scales.

Exh. ter Meer 24, Doc. 32, Book I, page 88.

II. His attitude to the NSDAP.

Ter Meer was always non-political. For a short time after the first World War he had been a democratic member of the Town Council in his home town. Such an office, however, does not involve any political tasks.

Exh. ter Meer 1, Doc. 3, Book I, page 11
" " " 2, " 4, " I, " 15
" " " 3, " 5, " I, " 17
" " " 240, " 31, " I, " 86.

In 1933, he did not join the Party at once, as many did, nor did he enter one of its ^{organizations,} branch ⁷, as others did, e.g. as an automobilist in the H.S. Motor Corps. He kept aloof from the Party. In 1937 he was requested to join the Party, but at first refused. Only when it was made clear to him that he would not receive a

passport for foreign travel and thus could not undertake any foreign business trips nor visits to his daughter who was living abroad and his grandchildren, ^{did} he join the party. But he was not active in the party, did not attend any meetings and did not accept any office.

Exh. for Meer	244;	Doc. 44;	Appendix Book I, page 2,
" "	" 33;	" 16;	Book I, page 52
" "	" 17;	" 24;	" I, " 71
" "	" 27;	" 13;	" I, " 43
" "	" 15;	" 22;	" I, " 68
" "	" 22;	" 29;	" I, " 80
" "	" 20;	" 27;	" I, " 74.

He also refused any kind of activity in the field of political economy.

Exh. for Meer 243, Doc. 43, Appendix Book I, page 1.

He maintained his negative attitude towards Nazism and showed this rejection quite openly.

Exh. for Meer	12;	Doc. 19;	Book I, page 63
" "	" 25;	" 40;	" I, " 119
" "	" 7;	" 9;	" I, " 29
" "	" 20;	" 27;	" I, " 74.

He never permitted the swastika flag to be hoisted on his house,

Exh. for Meer 18, Doc. 25, Book I, page 72,

and did not wear the party badge, but borrowed one whenever it was absolutely necessary.

Exh. for Meer	10;	Doc. 14;	Book I, page 47
" "	" 16;	" 23;	" I, " 69.

His rejection of the racial theory was particularly sharp.

Exh. 27;	Doc. 13;	Book I, page 43,
" 10;	" 14;	" I, " 47
" 26;	" 12;	" I, " 37
" 22;	" 29;	" I, " 80
" 33;	" 16;	" I, " 52
" 25;	" 40;	" I, " 119.

He interceded energetically for persecutees and procured for them positions abroad.

Exh.	for	Heer	11,	Doc.	15,	Book	I,	page	49
"	"	"	26,	"	12,	"	I,	"	37
"	"	"	28,	"	11,	"	I,	"	34
"	"	"	29,	"	42,	"	I,	"	123
"	"	"	30,	"	41,	"	I,	"	122

He paid the minimum membership fee although it came, on this account to an argument between his wife who settled these affairs, and Party officials.

Edh. ter Meer 19, Doc. 26, Book I, page 75.

He always discharged his duties toward the church.

Eth. ter Meer 14, Dec. 21, Book I, page 67,

so that the whole of the Presbyterium of his home congregation has taken his side.

Ed. ter Meer 13, Dec. 20, Book I, page 65.

He publicly disapproved of the economic policy of the Nazis.

Exh. ter Moor 20; Dec. 27; Book I; page 74
 " " " 21, " 28, " I, " 78.

Ter Meer was watched with the greatest mistrust by the Gauleitung in Frankfurt, who repeatedly demanded that a convinced party follower be admitted into the Vorstand of the I.G., but this he prevented.

Ich. ter Meer 244, Doc: 44, Appendix Book I.
 - continuation ter Meer, Transcript, Engl. page, 6736; 6746,
 German page 6859, 6868.

He was himself later intended to be removed from the Vorstand as politically unreliable.

examination Krauch, Transcript, Engl. pages 5154/55
German page 5178.

As Aufsichtsrat of a freight car factory, he appointed three non-Party members in 1942 as members of the Vorstand and rejected a Party member for this position.

Exh. ter Meer 23, Doc. 30, Book I, page 83.

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Ter Meer had had no relations with prominent Nazis, no advantages from the National Socialist Regime and no income which he owed to the Nazis.

B. Positions outside I.G. held by Dr. ter Meer,

Ter Meer held a number of positions which are listed in the Prosecution Exhibit 310, NI-9762, Book 11, English Page 147, German Page 169.

In regard to some of these, it is remarked as follows:

ad Number 7: Military-Economy Leader (Wehrwirtschaftsfuehrer):

To this ter Meer was only appointed in May 1942 by the Reich Ministry of Economics, and not by any Armaments Order Allocation Office. It was a purely nominal affair, as this appointment could not be avoided in ter Meer's position as Vorstand member of I.G.

In the view of the former manager of the Frankfurt Chamber of Commerce the appointment at that time was the sign of a certain mistrust on the part of the Gauleitung towards ter Meer.

Exh. ter Meer, Document 45, Book I, Appendix.

ad Number 8: Delegate to the Plenipotentiary General for Italy.

I will comment on this in connection with ter Meer's stay in Italy.

(Compare page 114).

ad Number 9, 10, 11: Economic / Chemical Industry.

He was a member of this, and, from 1942, deputy chairman of the Praesidium. It met for the first time on 18 March 1943, and

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during the first year was only concerned with questions of re-organization, the setting-up of sub-sections (Fachgruppen) and sub-departments, etc. Ter Meer assisted very little in this task.

Although he tried hard to resist, he was also appointed chairman of the Collective Group Anorganica, but he never exercised this office. He was also elected District Chairman for Frankfurt on Main, but he never took up this post.

Exh. ter Meer 32, Document 17, Book I, Page 55 ff.
Examination ter Meer Transcript Engl. P. 6752; German P. 6877
" " 7244, " " 7303.

Dr. Ehmann had stated earlier

Prosecution Exh. 499, NI-5933, Engl. Book 24, Page 13
German " 22, " 44,

that ter Meer exploited his position in the Praesidium of the Economic Group to the advantage of I.G.

In his examination on 7 October 1947, however,

Examination Ehmann Transcript Engl. P. 1728/29
German P. 1713

he rectified this statement by saying that representatives of the I.G. had apparently used ter Meer's position to secure advantages for the firm they represented and without ter Meer's knowledge.

When he left for Italy on 13 September 1943 his activities in all the above mentioned groups and committees ceased entirely.

and Number 12: member of the advisory Council (Beirat) of the Frankfurt Chamber of Commerce.

A mere formality, which was a matter of course for a Vorstand member of I.G. in Frankfurt.

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Ad Numbers 13, 14: Trade Association of the Chemical Industry.

In activity connected only with social welfare, in which ter Meer devoted himself whole-heartedly to the welfare of the chemical industry employees looked after ^{by} the Association.

Exh. ter Meer 33, Document 16, Book I, P. 52.

Ad Number 15: House of Technology.

Reference is made to ter Meer's testimony

Examination ter Meer Transcript Engl. P. 6754, German P. 6878, in which he stated that this was a purely technical institution, which moreover did not develop beyond the initial stage.

Ad Numbers 16, 17, 18: These companies had to carry out certain financial tasks for the Kaiser-Wilhelm Gesellschaft, that is in connection with purely scientific questions. Ter Meer did not exert any influence on the tasks of the Kaiser Wilhelm Institut intentionally, still less did he direct any work which would have been important or useful in war, as the Nobel Prize Holder, Prof. Hahn, testified.

Exh. 6, M. 11, Document 15, Book I, P. 49.

Ad Number 19: In his capacity as Treasurer of the Group Chemistry in
ciation
the National Socialist Assoc. of German Technicians, ter Meer had nothing to do. According to the witness Schieter this was an honorary position.

Examination ter Meer, Transcript Engl. P. 5272/73
German P. 5299.

In view of their unimportance it would be superfluous to refer also to the other positions.

C. Ter Meer's position and activities within the I.G.

It is necessary to clarify the position of the defendant within the I.G., in order to indicate the limits of his responsibility on the one hand and show his sphere of influence on the other hand.

1) Dr. ter Meer was a Vorstand member of I.G. On the occasion of the merger in 1925 he became a member of the Vorstand of I.G. Farben. The Vorstand consisted at that time of 83 persons from among whom a working committee of 26 members was formed, ter Meer being one of them. During the following years more and more members resigned, so that when the new law concerning stock-companies came into force on 1 October 1937 the Vorstand consisted of only 27 members.

Exh. Defense 172 v, Knieriem, Document 36, Beck V, P. 311.

The Vorstand members were particularly carefully chosen. Only those men were appointed Vorstand members who had been working in a Konzern plant for many years and who were known to all the others as outstanding experts in their special field, as well as men of reliable characters. Owing to this strict selection, the Vorstand members could rely on each other. Because it was so strict irregularities occurred only on two occasions and the result was immediate dismissal.

Examination ter Meer Transcript Engl. P. 7184, German P. 7245.

According to German Corporation Law there is a collective responsibility of the Vorstand of an Aktiengesellschaft with regard to liability under civil law,

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i.e. all Vorstand members were liable according to civil law for what any Vorstand member did in the performance of his work as a Vorstand member. However, there is no such collective responsibility of all Vorstand members in the field of penal law. A Vorstand member is only liable to criminal prosecution for acts which he himself has committed or things which he has failed to do through neglect. I.G. was a large Konzern with a Vorstand of 27 members. The management was divided up among those, so that a certain Vorstand member had a certain field of interest. He was responsible for this particular field. Owing to the size of I.G. it was actually impossible to manage the business differently. The responsibility of the individual members from a criminal law standpoint must be brought into line with the actual facts, so that a Vorstand member can only be made responsible for what happened within the field of activities for which he was responsible.

There is not and there cannot be any collective responsibility of the Vorstand of I.G., from a criminal law point of view, for everything that took place within I.G., because the field of activities was too large.

Nor can one assert a broader responsibility of the Vorstand, by saying that the Vorstand members

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a crime by somebody else was knowingly and wilfully promoted;

In order to define his responsibility as a Vorstand member, the following important point should be here pointed out;

In 1936 the Vorstand-member Krauch was appointed^{tc/} the Office for German Raw and Plastic Materials, where he became Chief of the Chemistry Sector (Gebechem).

Neither the Vorstand nor the Central Committee knew about his appointment, therefore there was no resolution passed concerning it.

Examination ter Meer Transcript English p. 6793, German p.6918/19.

Krauch remained a member of the Vorstand, of the Central Committee, and of the Technical Committee, but after the autumn of 1936 he did not participate in any meeting of these bodies. At the request of ter Meer he resigned his position as Sparte Chief in 1938.

Examination ter Meer, English Transcript P. 6794, German P. 6920.

The fact that Krauch often had to collaborate with competitor firms of I.G. was already sufficient reason for this; Krauch himself always correctly kept the line of demarcation.

Examination ter Meer Transcript English P. 6794; German P.6921.

A sharp distinction must be made between Krauch's position as General Plenipotentiary Chemistry (Gebechem) and his purely formal membership after 1936 of the I.G. Therefore it results that whatever Krauch did as Gebechem cannot be placed to the account of I.G. and its various Vorstand Members.

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2) Ter Moor was a member of the Central Committee.

The Central Committee was formed in 1929, as the Vorstand which consisted at that time of 70 persons, had proved to be too unwieldy in its workings. The Central Committee was to be a higher committee within the Vorstand, where the important technical and commercial questions as well as questions of a fundamental nature were to be prepared and discussed by a small circle of persons.

In 1935, chairman Bosch was replaced by Schmitz. As a result of this, the character of the Central Committee was fundamentally changed and the importance of the Central Committee considerably reduced. It became gradually less and less important with the result that finally only preliminary discussions of the annual balance sheets and annual reports, personnel problems and sometimes problems related to taxes also, took place among its members. Within this committee contributions to special funds were decided upon, the decisions being announced by Schmitz to the remaining members of the Vorstand during the meeting of the Vorstand on the following day.

One may not draw from the fact that he was a member of the Central Committee, the conclusion that ter Moor was invested with superior or special authority.

Ter Moor's interrogation, Transcript, English Pages 6769-6771, German Pages 6894 and 6896.

In his capacity as member of the Central Committee, ter Moor was present when decisions were taken on and was informed of contributions made by I.G. after 1933, but only in so far as the decision to make such contributions were actually taken in the Central Committee.

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Ter Meer had no knowledge before payment was made, of the contributions to which the Prosecution makes special reference, for instance RM 400,000.— in February 1933, RM 100,000.— to the Sudeten-German Volunteer Corps (Freikorps) and RM 500,000.— after the occupation of Czechoslovakia and several contributions of RM 100,000.— each to the SS. These contributions were never decided upon or even made the subject of discussion in the Central Committee or Vorstand.

Ter Meer's interrogation, Transcript, English Page 6774,
German Page 6899.

Ter Meer heard nothing of presents made on the occasion of Goering's birthday. No decisions were taken upon such gifts during meetings of the Central Committee or Vorstand. He did not ^{then} give/his approval at a later date either. He heard of them by chance from persons outside the I.G.

Ter Meer's interrogation, Transcript, English Page 6773,
German Page 6899.

From 1933 onwards, the I.G. made contributions amounting to a total of 40 millions, either through the Central Committee or through individual plants. If one deducts from this amount expenditure made for social, charitable and scientific purposes, a sum of 5.2 millions remains, being the amount spent over a period of 12 years by a total of 20 plants i.e. RM 20,000.— —0.3 to 0.4% of the annual turnover — were contributed yearly by each plant.

Ter Meer's interrogation, Transcript, English Page 6772,
German Page 6898/

This can hardly be regarded as serious support of the Party.

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3) Ter Meer's Chairmanship of the Technical Committee.

The Technical Committee - TEA -, the highest technical committee of the I.G. was formed in 1925. In the course of time, on account of the increasing number and variety of the products of the I.G., the task of the Technical Committee (TEA) became too extensive and its workings too cumbersome. In 1929, therefore, after the formation of the Sparten, much work was transferred to them, for instance the planning of new buildings, which was accomplished in so-called "Sparten-Tea-Sitzungen" (Sparten-Technical Committee meetings) in preparation for the Technical Committee.

Dr. ter Meer gave a detailed statement on the technical organization of I.G. in his affidavit of 23 April 1947.

Prosecution Exh. 333, NI-5186, Book 12, English Page 114,
German Page 95.

Further details on the Technical Committee (TEA) are contained in ter Meer's statements of 15 and 29 April 1947.

Prosecution Exh. 334, NI-5187, Book 12, English Page 126,
German Page 107;
Prosecution Exh. 330, NI-5184, Book 12, English Page 91,
German Page 91.

Ter Meer also made a detailed statement on the Technical Committee (TEA) during his interrogation on 11 February 1948.

Ter Meer's interrogation, Transcript, English Page 6776,
German Page 6902.

The standing Orders of the Technical Committee (TEA),

Prosecution Exh. 323, NI-7603, Book 12, English Page 213,
German Page 195

describe as the field of work of the Technical Committee (TEA)

"all technical and scientific questions arising within the I.G.

and all other fields of work, in so far as they are connected with these questions" (English Page 214, German Page 196). The main function of the Technical Committee was to furnish information to the leading technicians of the I.G. This aim was achieved by means of scientific and technical lectures which were delivered at every meeting of the Technical Committee (TEA). "Lectures" on the subject of which thorough preliminary discussion had already been conducted in the minor committees, Sparten, Technical Sparten (TEA-Sparten) and committee meetings, were then dealt with,

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Ter Hoer's interrogation, Transcript, English Pages 6780/81, German Pages 6906/07.

Questions connected with contracts were dealt with only in so far as they were of a technical nature. These included contracts of association with technical experts, professors etc., and, in addition, agreements to be concluded with other enterprises on the subject of licenses to be granted by both parties or the exploitation of new technical processes or inventions.

In former years manpower problems were also discussed. After its reorganization in 1938, however, questions relating to the allocation of labor were, in general, no longer handled by the Committee, as this was the task of the Betriebsfuhrers and Personnel Departments of the individual plants.

Ter Hoer's interrogation, Transcript, English Pages 7128/29, German Page 7181.

From about 1942 onwards statistics on the factory staff of the major I.G. plants were presented, when the occasion arose, by Dr. Struss, Director of the Office of the Technical Committee (TEA), in order to demonstrate to the Technical Committee the possibilities to be taken into account in budgeting for expenditure for new plants. In other words: Dr. Struss wished to indicate the probable period within which the new plants for which approval had been obtained, could be completed, a matter which, of course, depended upon the number and type of manpower available.

Struss' interrogation, Transcript, English Pages 4064/65,
German Pages 4091/92.
Ter Hoer's interrogation, Transcript, English Pages 7129/30,
German Pages 7182/83.

The Technical Committee was not a committee invested with the authority to take and execute decisions. It was not an executive body, but merely an advisory one. It examined propositions, records etc. expressed its opinion thereon

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and put its proposals to the Vorstand, which regularly met on the following day. The Vorstand then decided what was to be done. The Vorstand was the committee which took decisions. The Technical Committee was not responsible for the supervision of the use of loans approved by the Vorstand upon its suggestion either. It had neither the right, nor was it its duty to do so.

As chairman of the Technical Committee for Meer did not rank as the superior ^{or} its members, especially of his colleagues of the Vorstand. He was rather primus inter pares (the first among equals). In the I.G. the Vorstand members were equals. There were no superiors and no subordinates.

The chairman of the Technical Committee was not the superior of the Spartan Leaders either, nor was he the superior of the Betriebsführers. He had no right to issue orders to them, and it was not his duty to supervise their activities. This follows from the above description of the constitution of the Technical Committee, which was purely an advisory committee and not an executive body.

The plants were independent from the point of view of technical management. The major plants were run by Vorstand members, who lived near their works. The major works were run in accordance with a tradition of many years' standing, which strengthened their independence. They therefore had their own Production, Research, Patents, Personnel, Legal and Purchase Departments etc. Several works were united in Works combines.

For Meer's interrogation, Transcript, English Page 6776;
German Page 6901.

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These facts also serve to show that Meer could not be informed of everything taking place in the technical field, and, especially, that he could not interfere in matters of technical production.

In order to present a picture of the work of the Technical Committee, the two Document Books, for Meer XII and XIII have been introduced. They contain the minutes of 17 consecutive meetings of the Technical Committee held during the period from 20 October 1936 to 7 August 1939.

Exh. for Meer 250-266, Document 78-94,
Book XII and XIII, Pages 1 - 107 and 1 - 124.

These 17 sets of minutes cover the period which began with the announcement of the Four Year Plan in October 1936 and ended with the outbreak of the war in September 1939. Examination of these minutes clearly shows that during this time, the Technical Committee was occupied with the objective pursuit of its normal duties. In these minutes there is not a single reference to mobilization plans, Vermittlungsstelle W, air raid protection measures, tactical exercises, etc. The agendas of these 17 meetings of the Technical Committee reflect normal activities throughout. The lectures with which every meeting of the Technical Committee began, dealt with practically all fields of activity of the I.G. Collaboration with countries abroad is marked by the discussion during these meetings of a large number of license agreements with foreign firms, among which figure 11 agreements with licensees in U.S.A., 4 in England, 2 in Poland, and one in France. Moreover, discussions were held on relations with foreign chemical firms with which a mutual license agreement had been concluded or in agreements with which the I.G. appeared as licensee.

During his interrogation on 11 February 1948,

Interrogation ter Meer, Transcript, English p. 6817,
German page 6943

ter Meer reported on the investment policy of the I.G.

Exh. ter Meer 37-42, Doc. 51-56, Book III,

indicates the new installations built during the period 1925-1939,
as well as the normal and extraordinary depreciations for those
years. As stated by ter Meer in
interrogation ter Meer;
Transcript, English p. 6817, German p. 6943,

these expenditures for new installations cannot be regarded as
being excessive in any branch. This is shown by a comparison
between expenditure after 1933 and that for the years 1925-29,
and also by a comparison between the expenditure for new installa-
tions and the amount of the depreciations. In

Exh. ter Meer, Doc. 58, Book III, p. 9,

a number of excerpts from the minutes of meetings at the TMA held
during the years 1938/39 are reproduced. They show indisputably that
every available means was used in an attempt to limit expenditure
for new installations and to reduce such expenditure, in so far as
this was possible, to the amount of normal depreciation rates.
These efforts to reduce expenditure for new installations - which
can be attributed to ter Meer, are evident as early as the TMA
meeting of 23 June 1937,

Exh. ter Meer 253, Doc. 61, Book XII, p. 57/58.

During this meeting it was decided to limit the maximum amounts
to be spent on new installations by the 3 Sparten.

During the Tea-meeting of 17 December 1937,

Exh. for Meer 255, Doc. 83, Book XII, p. 96,

the following important decision was taken:

"General Credit Situation:

The amounts allocated to the 3 main groups for 1937 were all agreed upon. For 1938 a temporary budget was submitted which provides somewhat larger amounts for the main groups I and II than those for the current year. This budget is to serve as a guide until further notice. It was agreed that the technical personnel of the I.G. must not be increased beyond the present strength."

In 1938, during the period between 7 April and - 15 September 1938, i.e. for a period of 5 months, no Tea meetings were held, in order to eliminate in this way the possibility of approval being given for the erection of new plants. For additional efforts by ter Meer to decrease expenditure for new installations, we refer to

Exh. for Meer 44, Doc. 58, Book III, p. 9.

By means of this energetic action on the part of ter Meer, it was indeed possible to reduce expenditure in 1939 to considerably less than that for 1938.

Exh. for Meer 37, Doc. 51, Book III, p. 1.

Furthermore, attention is drawn to

Exh. for Meer 265, Doc. 93, Book XIII, p. 117.

The chart reproduced in the document shows that the balance of loans already approved (without Buna) brought forward on 1 January 1939 is 114 million Reichsmark less than that recorded on 1 January 1936. This amounts to a reduction of 27%.

Thus the minutes of the 17 meetings of the Tea, held during the period between the proclamation of the Four Year Plan and the outbreak of war show a clear picture of continuous effort - especially on the part of ter Meer - to limit and to reduce expenditure for

new installations; efforts which become clearly visible in 1939.

From the time of the proclamation of the Four Year Plan onwards, Dr. ter Meer as the chairman of the Tea took care that the I.G. did not become a mere tool in the hands of the economic policy of the Third Reich. Referring to the attitude of the defendant ter Meer at the time of the proclamation of the Four Year Plan, the witness Kuepper stated the following during his interrogation on 29 January 1948:

(Interrogation Kuepper, Transcript, Engl. p.6027, German p.6063,)

"Here again I can tell you something about it because I happened to be in Dr. ter Meer's room when the afternoon papers in Frankfurt brought the news that at the Party Rally in Nuremberg, the Four Year Plan had been proclaimed. Dr. ter Meer was surprised. It was doubtless completely new to him and we discussed what work would result for him in his field from such a plan."

According to

Prosecution Exh. 1962, III-14 509,

which was submitted as supplementary evidence during the cross-examination of the defendant Baergin, on 5 March 1948, referring to the 40th meeting of the Chemicals Committee held on 20 November 1936 at Frankfurt/Main, it becomes obvious that the meeting was convened, in the first place, in order to define the attitude of the Committee towards the Four Year Plan and its consequences for the I.G. At the beginning, ter Meer pointed out that the financial situation of the I.G. which was to be expected to become tense would create the necessity for very great caution in the selection of projects. The minutes contain the following decisions:

"Sulphuric Acid:

Chem therefore agrees to leave further expansions to third parties and gives in principle its permission to the issuing of licenses for our Gypsum Sulphuric Acid process.

Rubber:

While work on the Buna factory Schkopau is proceeding to the extent planned, we have already finished (herausgezogen) carbon black.

Light Metals:

Nothing new is to be reported on magnesium. In aluminium I.G. will not exceed the 9,000 tons per year, of which so far 4,500 tons per year have been approved and are being built in Bitterfeld. A participation in a partnership plant with VAW is out of the question. — In cryolite we want to confine ourselves to the Leverkusen plant and leave to others the production of further amounts."

The above minutes show incontrovertibly that the I.G. wanted to keep itself aloof from certain projects.

4. Dr. ter Meer was manager of a Sparte.

a) The decade following the first World War was a period of major industrial development, particularly in the mineral oil- and automobile industries, as well as in the chemical industry (nitrogen-synthesis, rayon). This necessitated thorough modernisation of the plants and intensive research. Both required very large sums of money. When in the fall of 1929 the world economic crisis was beginning to cast its shadow, these high costs had to be reduced. Consequently Bosch re-organized the industrial management of the I.G. in 1929 and subdivided the plants and the installations of the I.G. into 3 Sparten. Three Sparte managers were appointed. Their main task was to reduce the costs of new installations and research work and to limit the size of stocks of raw and finished materials. Therefore the Sparte managers were efficiency experts who were responsible

for the financial equilibrium within their own Sparte.

b) When the world economic crisis was over, the I.G. retained its division into Sparten. The managers of the Sparten were to ensure that expenditure within the individual Sparten were in proportion to receipts. Likewise, the division into Sparten was supposed to guarantee that the Sparten would remain within their own spheres of activity. The object of this was to prevent, for instance, several plants of the I.G. from working on the same task independently of each other or even at each other expense.

Manager of the Sparte I: Krauch 1929-1938, Schneider 1938-45
" " " " II: ter Meer 1929-1945
" " " " III: Gajowski 1929-1945,

Sparte II dealt mainly with dyestuffs, but with so many other products in addition, products such as drugs, heavy chemicals and light metals, that it was quite impossible for a single man to supervise the entire production of this Sparte, since in order to do so, extraordinarily far-reaching expert knowledge would be necessary which a single brain could not, in any case, acquire.

Interrogation ter Meer, Transcript English pages 6781-85
German " 6907-11
English page
German " 6947.

Owing to the size of Sparte II, ter Meer did not and could not learn of everything which went on in the fields of development, manufacture, etc. There were many matters of which he was not allowed to learn, because they were secret, for instance the invention of Tabun in Ilberfeld.

Interrogation ter Meer, English p.7246-47, German p. 7306,

and Adressit which was produced at Uerdingen.

Interrogation ter Hoer, Transcript, Engl. p. 7300, German p. 7361.

As manager of the Sparte, ter Hoer was not the superior of the other members of the Vorstand who were working in his Sparte, and who were managers of the large works. He was merely *primus inter pares*, as was the case in his capacity as chairman of the Tea. The other members of the Vorstand were not and could not have been his subordinates. They were his colleagues, and there were, amongst them, older men who enjoyed international reputations, men, for instance, such as Hoerlein, Kuehne and Pistor. They were all equals.

Thus the relation of ter Hoer to the individual works was the same as the relationship established by him in his capacity as chairman of the Tea. As manager of the Sparte, it was impossible for him to interfere with the authority of the Betriebsfuhrer. He had no authority to issue orders to these men or to the other members of the Sparte and it was not his duty to supervise their activities. This right and this duty was the function of the Vorstand alone.

Within the Sparte, the problems destined for the Technical Committee were prepared during the so-called Sparte - Tea conferences. These dealt solely with technical problems and those problems which fell within the scope of the Technical Committee's authority, which did not include labor questions, for which the Personnel Departments of the works were responsible.

Ad Count I of the Indictment:

A. Knowledge of Plans for aggressive Warfare.

The defendants are charged with having participated in a common plan or conspiracy to commit crimes as defined by Control Council Law No. 10. These crimes are comprised in the planning, preparation, initiation and waging of wars of aggression. The IMT Judgment states in this connection at the end of par. 6) that

"Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated."

The circle of persons who could have supported Hitler is therefore, as regards the type of accomplices, a wide one. It is, however, closely limited by the fact that only ^{such} persons come into the question as had "knowledge of his aims". It is clearly and definitely stated under par. 3 of the IMT Judgment that general, supposed, or uncertain knowledge does not come into consideration, but that there must be definite knowledge of a certain concrete plan for the waging of war. The IMT Judgment accordingly recognized this knowledge only in the participation in certain conferences which were held by Hitler or in the positive knowledge of the subject matter of these conferences. This principle was strictly observed in the Judgment against the defendants in the IMT trial, and leading politicians of the Third Reich

whose participation in certain meetings or knowledge of the subject matter of these conferences could not be proved, were therefore acquitted.

With reference to the whole of the defendants, the Prosecution has not produced any evidence that any one of them took part in any one of the Hitler conferences concerned or had knowledge of their subject matter.

B. Ter MEER had no Knowledge of the Plans for
Aggressive Warfare.

The Defense Counsel for the defendant Dr. ter MEER, together with the Defense Counsel for the other defendants, is in principle of opinion that the evidence produced by the Prosecution in connection with Count I of the Indictment is irrelevant, as the Prosecution could not prove that any one of the defendants had definite knowledge of positive plans by Hitler to wage aggressive war, such as, according to the statements under A, is required.

The Prosecution has so to speak, buried the Defense under an enormous number of documents pertaining to Count I of the Indictment, with which it intends to prove that the I.G. made more or less substantial contributions to the German rearmament prior to World War II and to the strengthening of the German war potential after the outbreak of the war. In the opinion of the Defense, the Prosecution did not succeed in proving any ^{such} fact. But even if it had succeeded in doing so, this would not according to the IMT Judgment have been sufficient for a conviction under Count I of the Indictment. For, apart from such

fact, a positive, certain knowledge on the part of the individual defendants of definite aggressive plans by Hitler would have to be proved. In order that this matter need not be discussed in detail, reference is hereby made to the motion of the Defense submitted on 17 December 1947 and to the statements of the Defense made on 9 January 1948 which were submitted in answer to the Prosecution statement on 6 January 1948.

The Prosecution, deliberately going beyond the IMT Judgment, which stipulates the knowledge of certain definite facts, maintains the point of view that the conviction of the defendants is admissible, even if they did not possess the knowledge as strictly defined in the IMT Judgment, but had any knowledge at all of the aggressive plans of the Nazi Government. However, in the opinion of the Defense, the Prosecution did not succeed in proving this point either. In particular it has not been able to prove that the defendant Dr. ter MEER had any knowledge whatever of an intended aggressive war.

The Prosecution asserts that the defendants must have known that the "creation and the equipment of the Nazi military machine" could only serve the purpose of an aggressive war. The re-armament of Germany greatly exceeded that of its European neighbours, so that no one could have believed in a defensive war. This interpretation of the Prosecution was convincingly refuted by the defense witness HUBERTER MANN. This witness, in regard to the German war potential

as compared to that of any potential enemies stated:

"The superiority of the other side was so striking that there was no need to waste words on it."

Testimony of FUEHNEMANN, English transcript p. 13498/99
German transcript p. 13794.

The defendants who had heard and believed Hitler's frequent assurances that Germany did not want war,

Testimony of FRITSCH, English transcript, pp. 13381/82
German transcript, pp. 13678/79

had, primarily as Vorstand members of a world firm, not the slightest interest in a war. The experience gained in World War I was still fresh in their memory. This war had destroyed all their foreign sales organizations. The I.G. had done considerable business by exporting high grade quality products. It maintained valuable relations to all the countries of the world. All this would have been endangered by a war. This was perfectly clear to all the Vorstand members, who saw further than national borders, owing to their frequent journeys to various countries all over the world and their old established relations to firms and persons in various cities all over the world.

Testimony of ter MEER, English transcript, p. 7126
German transcript, pp. 7179/80

Basic Information Defense, English text, pp. 13891 and following pages
German text, pp. 14121 and following pages.

Moreover, the defendants knew their sphere of work and drew the logical conclusion therefrom that Germany would never be in a position to stand a long war depending on supplies (Materialkrieg), because they knew well enough the economic power of other countries. From their knowledge of public opinion in USA - ter MEER had been in USA seven times from 1928 to 1938 - they expected

that this country would enter into the war on the side of the enemies of Germany, or at least that it would make available its tremendous technical resources to them. Above all ter MEER knew that Germany was behind in the production of rubber and fuel, and that this shortage was bound to make itself noticeably felt in the new Luftwaffe and in the mechanisation of the Army.

Testimony ter MEER, English transcript, pp. 7125/26
German transcript, pp. 7178/79.

Though the above statements which are of a more general nature alone render improbable the assertion of the Prosecution as to the knowledge of an aggressive war, we shall in the following point out several incidents which make it clear that the defendants, and ter MEER in particular, did not expect an aggressive war:

-
- a) In a nitrogen conference on 25 August 1939 (six days before the outbreak of war) a five-year-plan was drawn up for the production of nitrogen.
Exh. SCHNEIDER, 15 Doc. 117, Book VIII, pp. 38/40.
Testimony SCHNEIDER, English transcript, pp. 7342/43,
German transcript, pp. 7409/10.
 - b) on 19 July 1939 the Pharmaceutical Main Conference decided to begin pharmaceutical production in France.
Exh. MANN 180, Doc. 327, Book IV, p. 6.
 - c) Prior to the outbreak of war, the I.G. had begun to build a plant of its own near Rouen (France) for the manufacture of textile auxiliary products and similar substances.
Exh. ter MEER 275, Doc. 96, Book XIV, English transcript, p.13001,
German transcript, p.13296.
 - d) The construction work on the dyestuffs plant in Trafford Park, England, which was jointly founded by I.G. and I.C.I. on 1 April 1938, was continued up to the last days of August 1939.
Exh. ter MEER 230, Doc. 68, Book III, p 45,
Testimony ter MEER, English transcript, pp. 7120/21
German transcript, pp. 7173/74.

- e) The tire tests in USA were continued up to the outbreak of war. The tire expert of the I.G. was supposed to make a second trip to the USA in the middle of August 1939 for this purpose. Ter MEER had informed HOWARD by letter of his visit in the fall of 1939, when he was to be accompanied by v. KNIERIM, AMBROS and MUELLER-GUTRADI.

Exh. ter MEER 220, Document 148, Book VIII, p. 58,
 " " " 217, " 145, " VIII, p. 53,
 Testimony ter MEER, English transcript, pp. 7106/7,
 German transcript, pp. 7159/60.

- f) Sixteen licence agreements were concluded with American firms in 1938 and the following years.

Exh. ter MEER 174, Doc. 102, Book VI, p. 3,
 Testimony ter MEER, English transcript, p. 7042,
 German transcript, p. 7091.

Among these agreements, there was a licence agreement with the Montanto Chemical Co.*) concerning the production of phosphorus.

- g) On 1 August 1939 Mr. BARTRAM, manager of Shaninigan Ltd., Canada, and Mr. MUSSET, of the ^{same} firm, visited the Ludwigshafen Works and were promised by Dr. AMBROS that the licences and experience of I.G. in the production of ethylene from acetylene (SHANINIGAN Ltd. intended to produce glycol and diglycol from acetylene), would be transferred to the Canadian firm. The agreement was to be concluded in Canada in the fall of 1939 on the occasion of Dr. AMBROS' trip to America *) (see par. e) above) which was scheduled for that date.

Testimony AMBROS, English transcript, p. 7919,
 German transcript, p. 8029.
 Exh. AMBROS 140/41, Doc. OA 104/5, Book OA II A, pp. 12-15.

- h) In 1938 and 1939, the Nitrogen Syndicate delivered 31,904 tons of ammonium nitrate to ICI (England).

Exh. OSTER 24, Doc. 24, Book I, p. 60/61.- *)

- i) In the meeting of the Technical Committee held on 7 August 1939, about 70 million Reichsmark were granted for the establishment of a color-film and colorfilm paper factory in Landsberg.

Exh. ter MEER 266, Doc. 94, Book XIII, p. 124.

- k) On 26 May 1939, Dr. AMBROS lectured on buna before the Société des Ingénieurs Civils de France and before the Société de Chimie Industrielle.

*) Phosphorus, diglycol and ammonium nitrate are strategically important products.

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Ambros Exhibit 29, Document OA 124, Document Book OA IA, p. 62/67

- 1) In August 1939, two chemists of the Carbide and Carbon Chemical Co. (USA) received permission to visit the I.G. Works, Hoechst, the Metallgesellschaft and the Degussa in Frankfurt on Main.

"We were cordially received by these concerns and noticed little of the suspicion and secretiveness that we had encountered in England and France."

Ter Meer Exhibit 69, Document 231, Document Book III, page 51.

The evidential value of all these facts which show that the defendants did not consider the possibility of war and particularly not of a war of aggression cannot be destroyed in the case of the defendant ter Meer either, by the single argument which the Prosecution has raised against him personally.

The Prosecution has attempted to make use of the letter written by Dr. ter Meer on 11 October 1938 to Brinkmann, then State Secretary, to prove that ter Meer was aware of Hitler's plans to commit an act of aggression against Czechoslovakia.

Prosecution Exhibit 563, NI-4717, Document Book 29, p. 11 of the English, page 34 of the German.

This can be seen from the questions put to Dr. ter Meer during his cross examination on 16 February 1948.

Interrogation of ter Meer, p. 7294 of the English Court Transcript, p. 7357 of the German.

The letter merely shows that after the Munich Agreement, Dr. ter Meer considered the political and military situation as far as Germany's relationship to Czechoslovakia was concerned ^{to be} critical, and therefore proposed that a Buna factory be built in the Sudetenland, i.e. in the vicinity of the Czechoslovakian frontier. Before this agreement, the Nazi Government thought that Czechoslovakia might be used as a spearhead of Bolshevism against Germany.

This view was generally propagated and generally accepted. In addition, ter Meer knew that Upper Silesia was an assembly area for troops. Of this he had been informed in 1937 when plans were going forward for the establishment of an I.G. factory in the area. When composing the letter of 11 October 1938, therefore, he was speaking only in terms of generalities when he wrote that Upper Silesia was considered as a troop assembly area. An army requires an assembly area for defensive just as for offensive purposes. Dr. ter Meer obviously thought only of the possibility of a defensive war.

Dr. ter Meer interrogation, p. 7023 of the English Court Transcript, p. 7973 of the German.

The Sudetenland crisis having been averted by the Munich Agreement, Upper Silesia was no longer considered as a troop assembly area, not even for defensive purposes, as is shown by the further statement made by Dr. ter Meer in the letter quoted above, in which the following appears:

"Following the subsidence of the political tension, it has again been suggested, that the Deschowitz site be used."
Prosecution Exhibit 563, NI-4717, Document Book 29,
page 12 of the English, p. 36 of the German.

Contrary to the opinions of the Prosecution, ter Meer's letter of 11 October 1938 provides no justification for the conclusion that the defendant Dr. ter Meer had any knowledge whatsoever of intentions to conquer or to wage war on Czechoslovakia or any other countries or took any part whatsoever in the drafting of plans of this nature.

Even as late as August 1939, Dr. ter Meer had no thoughts of war. This is clearly shown by his personal conduct and that of his family at that time:

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In August 1939 ter Meer himself was on leave in Karlsbad. At the end of August, he travelled to Upper Bavaria to visit his sister. He did not arrange at the time for his 77 year old mother, who lived at Uerdingen, Lower Rhine, to come to Upper Bavaria. He first took action to bring her to Bavaria shortly after the outbreak of war, as he considered Uerdingen, situated as it was near the frontier, to be in a danger zone. His daughter who, from the age of three onwards, had been his only remaining child, was staying in Finland in August 1939. Ter Meer did not recall her in the latter days of August.

ter Meer Exhibit 232, Document 33, Document Book I, p.31
ter Meer Exhibit 233, Document 34, Document Book I, p.33.

C. The I.G. was not an "instrument of war in the hands of the Nazis."

I. Chemical Products and War Potential.

a) In Section D of the Prosecution Trial Brief of 6 December 1947, the Prosecution deals with the "Creation and Equipment of the Nazi Military Machine" with which the I.G. is charged.

It should be stated at the outset that the Prosecution has brought no evidence in support of their assertion that the I.G. contributed to the "creation of the Nazi Military Machine" on its own initiative. This was entirely beyond the scope of a private firm, however large it may have been. The rearmament of Germany was a measure taken by the German government, on which the I.G. had no influence. Furthermore the Prosecution have brought no evidence to prove that leading men of the I.G. pursued military aims in the years following 1933, or that they influenced the government to foster such military aims. Up to the time of his death in 1940, Bosch was incontestably ^{the} leading executive in the I.G.. Incontrovertible proof of his opposition to the Nazi Regime and its methods has been submitted by the Defence.

As far as the "Equipment of the Nazi Military Machine" is concerned, the methods adopted by the Prosecution in their argumentation are truly remarkable. They seek to represent the situation as one in which the Chemical Industry played the supreme and decisive role. The absurdity of such an assertion is immediately obvious. Armament cannot be achieved with chemical products alone. A military machine requires modern weapons, it requires

tanks, war ships, aeroplanes etc. Each of the industries engaged on the production of these weapons of war is just as important and essential as the chemical industry. Even the completely biased statements of Elias, witness for the Prosecution, in the course of cross examination on 30 September 1947, which, for the most part, consist of the expression of personal opinion, cannot disguise the truth of this fact. In the course of cross-examination, on 30 September and 1 October 1947, the same witness Elias was forced to admit, moreover, that the achievements of the I.G. both before and after 1933 were of high scientific value, that they served purely industrial purposes and that such work was being performed at the same time in industrial countries throughout the world.

Interrogation Elias, p.1400, 1403, 1404, 1406, 1407/8,
1447, 1456, 1461/2 of the English
Court Transcript,
p.1375, 1378, 1379, 1381, 1382, 1421,
1429, 1437 of the German.

In a single breath, as it were, the Prosecution deal with such heterogeneous subjects as nitrogen, methanol, benzine and light metals on the one hand and with products such as diglycol, gun powder stabilizers and chemical warfare agents which are of importance specifically for re-armament on the other. They cannot escape the fact that, in the case of the products cited in the first list, products such as nitrogen etc., the fields of work concerned are fields which were opened up by the I.G. long before 1933, thus for example nitrogen in 1910, methanol in 1923. The hydrogenation of coal was discovered by Bergius in 1913 and was practised on a large scale in 1927. Research work on synthetic rubber began as early as 1906 and, during the years from 1926 onwards,

was directed into new industrial and technical channels. The Prosecution deliberately and completely closes its eyes to these facts and to all considerations of an industrial nature. They apparently know nothing whatsoever of the unemployment which prevailed in Germany at the beginning of the thirties, the dire shortage of ^{food,} the lack of foreign currency and the measures taken by the Government to eliminate or at least to alleviate these conditions.

The statements of the Prosecution create the impression that any more important concept, namely the meaning and significance of the words "war potential", was totally unknown to them. The Prosecution sees in every peace-time product of the I.G. only materials of war, strategic equipment and the like. The witness Dr. STRUSS was made to draw up a list of 18 chemical products which were dictated to him.

STRUSS interrogation, p. 4124 of the English Court Transcript, p. 4153 of the German.

The majority of products mentioned in this list are perfectly normal peace-time products of the chemical industry. A corresponding list of the important products - important in peace as in war - compiled by firms of world renown, such as Dupont and Imperial Chemical Industries, would look precisely the same. The German list bears the correct heading, "Important Products", the English list on the contrary, the inaccurate heading, "Strategic Products". This difference in the heading in the two languages, which does not appear to be merely a thing of chance, demonstrates the means with the help of which the Prosecution propose to conduct their argumentation.

But this is no way in which to prove a point. At the best of times, it merely serves to reveal the lack of truly grave arguments.

In the book, "A Year of Potsdam" published by the press of the American Military Government in 1946, the concept "war potential" is very graphically defined. In an article on this book which appeared in the "Stars and Stripes" of 4 December 1946, the following passage occurs:

"American authorities, the report discloses, believe that the major economic issue facing the Allies is how to destroy Germany's war potential without destroying her ability to support herself. The review points out "Two apparently irreconcilable facts: nearly all industry supports modern war, but it also supports people". (Underlining by the Defense)

The expression "war potential" comprehends a wide field. It is the sum of all the human and economic assets of a country. The number of inhabitants, their capacity for work and their knowledge are as much a part of the war potential of a country as its natural resources (coal, mineral ores etc.), its power plants, lines of transportation, communication and transportation equipment, agriculture, industry and skilled trades. All these assets serve for the maintenance and well-being of the population in time of peace, but in time of war, they form the basis for the supply of the fighting forces. The causal connection between the industrial progress

of a country and the automatic increase in war potential resulting therefrom is also a fact which it is impossible to escape. This is a truth which, in view of the outcome of the second World War and of the background of political tension against which the life of the past few months has been lived, should be abundantly clear to all thinking people.

But if the I.G. is efficient, if it uses its inventive talent to good purpose, if it opens up new fields of work which are inscribed for all times among the works of fame within the book of the history of Chemistry and Technology, then it must of necessity have had a war of aggression in view. This, at all events, is the position as represented by the Prosecution. The absurdity of such argumentation is manifest. What were General Motors and FORD doing when they introduced modern assembly line automobile production into Germany? There is no doubt that they were bringing to the German automobile industry the latest technical achievements of the USA. As a result of the efforts of General Motors, the Opelwerke became one of the largest producers of private automobiles and heavy trucks in Germany. Should not Opel and FORD be sitting in the dock, then? Assuredly not. All that is required is a true interpretation of the conception of war potential.

The entire production of I.G. was concerned with peacetime production. The defendants Duester, Schneider, for Meer, Ambros, have described in detail the motives for the increase of the production of nitrogen, methanol, benzene, and buna in the years 1933 - 1939 and proved the economic conditions in detail. The allegation of the witness Elias that benzene and buna were not profitable has been rebutted as not being correct in respect of conditions in Germany. Reference is made to the statements concerned of the above mentioned defendants. Only in the field of magnesium, the initiative to increased production was taken by the Reich Air Ministry as the office of combined civil and military aviation. But even here economic considerations played a part.

Examination for Meer, Transcript Engl. p. 6796, German p. 6922. Reference is made to the detailed statements by the defendant Baergin.

- b) The I.G. had no interest in plants which would only be engaged in production in the event of war, the so-called standby plants. They

therefore refused plants which only served rearmament and which were demanded by the Wehrmacht. The Reich therefore had these plants as standby plants. They were financed by the Reich and were owned by the Reich.

Examination Dickmann, Transcript Engl. p. 2209; German p. 2201
 " ter Meer, " " p. 6800, " p. 6924
 " Dr. Struss, " " p. 4085/7, " p. 4132/3.

The Prosecution, however, treat the products of these Reich-owned standby plants throughout as I.G. plants. This interpretation is incorrect. The standby plants were not I.G. plants, they were owned by the Reich. The I.G. only had to provide chemists, engineers, and experience. This is explained by the fact that I.G. was technically foremost in various fields in Germany, which induced the Wehrmacht to make use of I.G.'s experience for the construction and operation of such plants. The number of such standby plants was not large.

Examination Gorr, Transcript English p. 2687; German p. 2687
 " ter Meer, " " p. 6800, " p. 6925.

- c) In certain cases, however, I.G. did not give in to the wishes of the Wehrmacht, for instance with regard to chemical warfare agents (poison gases). They deliberately refused collaboration in this field.

Examination ter Meer, Transcript Engl. p. 6802/04, German p. 6929
 Pres. Exh. 659, NI-10595, Book 36, English p. 112, " p. 149,

The fact that I.G. made their experience in the preliminary products of a chemical warfare agent available to Orgazid, an outside firm, could not be avoided. It does not make any difference to their basic attitude.

Examination ter Meer, Transcript English p. 6808, German p. 6932/3.

Owing to their reserve in this field,

I.G. owned at the outbreak of war only one single old plant for the production of the tear gas Chloracetophenon, the production capacity of which amounted to 8% of the entire capacity of chemical warfare agents; without taking the tear gas into consideration, the I.G. capacity was 0% at the outbreak of war.

Prosecution Exh. 1819, NI-12725, Book 36, Engl. p. 130
German p. to follow
" " 1820, NI-12678, " 36, Engl. p. 130
German p. to follow.

In addition there were plans for Reich-owned chemical warfare agents plants at Gendorf and Huels, as well as for the small plant for the chemical warfare agent azino at the Uerdingen plant.

At the instance of Major Tilley, ter Meer made a detailed statement regarding the chemical warfare agents question in his report of 12 July 1945, at a time when he did not know and did not expect that an accusation would be brought against him. This report is therefore of special importance as evidence. Reference is made to it.

Exh. ter Meer 35, Document 67, Book III, p. 38.

It is not considered necessary to make further reference to it, as it clarifies the knowledge of ter Meer in this field. For the rest, in the question of chemical warfare agents, reference is made to the statements in the Closing Brief of the Defense Counsel for the defendant Ambros.

- d) Ter Meer in his examination concerning the rearmament question between 1933 - 1939

Examination ter Meer Transcript English p. 6795 - 6802
German p. 6921 - 6929

also testified in particular as to the products of the I.G. which were delivered to gunpowder

and explosives and also to munition factories, he estimated their turnover in 1938 at less than 50 million Reichsmark - roughly 3% of the turnover of the I.G. proper at that time. The Defense submitted the following documents as proof of these figures:

Exh. ter Meer 268;	Document 95;	Book XIV, p.4	
" " " 269;	" 99;	" XIV; Appendix I	I
" " " 270;	" 100;	" XIV, " I	I
" " " 271;	" 47;	" XIV, " I	I

The turnover figures of 1938 as shown in this document are:

Exh. ter Meer 268	RM 28,536,505.--
" " " 269	" 5,000,000.--
" " " 270	" 7,636,658.--
" " " 271	<u>3,732,097.--</u>
Total	RM 44,905,250.--

In these figures, the deliveries for civilian requirements (explosives for mines, hunting and sporting ammunition) are also contained, as no data was available for a break-down according to civilian and military requirements. They prove that the figures ^{given} by ter Meer in his examination on 11 February 1945 are right.

The Prosecution tries also to make I.G. responsible for the entire explosives production of the Dynamit Nobel A.G. and its subsidiaries.

- e) The relationship of I.G. with DAG is dealt with fully in the special Closing Brief of the Defense concerning DAG. Dr. ter Meer had only, as Chairman of the Technical Committee, a loose contact with DAG. The DAG, which had an independent management,

Prosecution Exh. 334, NI-5187, Book 12, Engl. p. 74, German p. 117 was represented in the Technical Committee meetings by its Generaldirektor Paul Mueller. Its loans were submitted to and discussed by the Technical Committee.

Examination ter Meer, Transcript Engl. p. 6811, German p. 6937. The military plants of the DAG were never discussed by the Technical Committee.

Examination Struss, Transcript Engl. p. 1871, German p. 1855/56. Dr. Mueller's participation in the meetings of the Technical Committee did not mean that he reported to it on details of the gunpowder production or the explosives field. Although he was a member of the Technical Committee, he was regarded more as a guest.

Examination Struss, Transcript Engl. p. 1870, German p. 1855. As shown in the 17 memoranda of the Technical Committee from the time of 1936 until the outbreak of war, in the Document Books ter Meer XII and XIII,

Dr. Mueller only once gave a report.

Exh. for Meer 253, Document 8, Book XII, p.56.

As is shown in the detailed memorandum on the report, this was only concerned with the historical development of the gunpowder and explosives Konzern.

In his examination on 16 February 1948, the defendant for Meer told about a discussion which he held with Dr. Mueller after 1936. The latter declined to answer a question of for Meer: concerning the production output of gunpowder and explosives in Germany on account of secrecy, but remarked however: "much, much less than the production during the first World War; just a fraction."

Examination for Meer, Transcript English p.7120, German 7173.

The testimony of the witness Huchnermann in his examination on 5 May 1948 confirmed this statement by Dr. Mueller in regard to the figures.

"At the outbreak of war, we had a capacity of about 5000 tons of gunpowder, and if we consider that the Hindenburg Plan of 1916 provided for 16000 tons of gunpowder per month, then what we had at the outbreak of war in 1939 was only one-third of that". . . . "

Examination Huchnermann, Transcr. Engl. p.13511, German p.13806 .

The statements show that for Meer, as Chairman of the Technical Committee, was not informed about the extent and details of the gunpowder and explosives production of the D.G. Neither did for Meer, as Chief of the Sparte, have any kind of insight into those matters. Organizationally, the D.G. was affiliated to Sparte III.

Dr. Heilbrunn states in Exhibit 1816 that the

balance sheet reports of the DAG were sent to the Office of the Technical Committee. Struss stated in

Exh. ter Meer 36, Document 65, Book III, p. 24

that, although the auditors' annual reports of the DAG were sent regularly to the Office of the Technical Committee, he never submitted them to Dr. ter Meer, as he knew that he was not interested in them. Ter Meer confirmed this in his examination on 11 February 1948.

Examination ter Meer Transcript Engl.p.6812, German p.6936.

According to the last paragraph of the same statement, he occasionally, however, told ter Meer the turnover figures of the DAG, which he received from the Central Book-keeping Department of I.G. As explained in detail in the Trial Brief DAG, nothing could, however, be gathered from it regarding the production. The witness Struss was cross-examined on the above mentioned Exhibit ter Meer 36 on 13 April 1948, and confirmed this in all points.

Examination Struss Transcript English p.11326/27, and 11332
German p. 11503 and 11511.

The Prosecution has tried to prove that Dr. ter Meer, through the auditors' reports of the DAG learned about the activities of the Verwertchemie, a subsidiary of the DAG. This, however, is not the case.

Examination Struss Transcript English p.1871/73

German p. 1856;1858/9

" " " English p.4153, German p.4165

" " " English p.11326/34, German p.
11504/9.

Reference is also made to ter Meer's testimony on 11 February 1948.

Examination ter Meer Transcript Engl.p.6811/2, German p.6937/8.

The minutes of the meeting held on 30 January 1939 at Troisdorf have been sent to ter Meer.

Pros. Exh. 353, NI-5685, Book 13, Engl.p.53, German p.65.

Ter MEER saw from this that the DAG operated factories which belonged to the Reich in accordance with the Montan scheme. The memorandum on the conference at Treisderf mentions the Verwert-Chemie as a subsidiary company of the DAG, but does not say a word on the subject of what it produces. TER MEER could therefore not draw any conclusions from the fact that the subject was mentioned.

Vermittlungsstelle W - Berlin, had nothing whatsoever to do with DAG and MASAG. Interrogation Gorr, Transcript, English page 2664, German page 2664. Moreover reference is made to the explanations on DAG in the closing brief.

The defendant Dr. ter MEER has given a survey of the technical development of I.G. in the years prior to 1933, from 1933 to the outbreak of the war and after the outbreak of the war in a report which he compiled during his detainment in the Kramsberg camp.

Prosecution Exhibit, 334, NI-5187, Book 12, English pages 130-131
141-142
German pages 110-111
123-124

This report originated at a time when the defendants did not know whether proceedings against the I.G. would be initiated. The content of these parts of the report represents, therefore, the opinion of Dr. ter MEER and his fellow technical experts GAJEWSKI, BUETEFISCH and HOEPFLE who were present in Kramsberg. It is entirely independent of the viewpoint of the Prosecution.

It was written in the absence of records of any kind and without contact with other technical experts in the I.G. plants. Ter MEER had spent most of the period after September 1943 in Italy and had therefore not maintained any personal touch with the daily events in the I.G. during the time of his absence which lasted almost three years. He wrote a historical account from memory.

If these circumstances of themselves make it likely that this report approximated closely to a historically accurate account, the evidence submitted has shown that the report described the technical development of the I.G. in the three periods mentioned fully and with complete accuracy in all essential points. The report is a clear refutation of the argumentation attempted by the Prosecution in so far as count I of the Indictment is concerned.

TER MEER gave a detailed statement on the question of new investments made by the I.G. in 1933/39 during his interrogation on 11 February 1940.

Examination Ter MEER, Transcript, English pages 6817/20, German page 6943/46. He compared the amounts of new investments with depreciation values and established the fact that the picture for the years 1933-1939 is in no way abnormal. Dr. SILCHER arrives at the same conclusions in his Basic Information Defense by comparing the invested capital of I.G. with the total investments of the German, or of the German chemical industry.

Defense Exh. 183, Doc. 12, Book II, Basic Information Defense. The turnover statistics of the I.G. for the years 1933-1939 point to the same conclusion.

Exh. TER MEER,	Doc. 61,	Book III,	page 20
" " "	49Doc. 62,	" III,	" 21
" " "	49Doc. 63,	" III,	" 22

Defense Exh. 184, Doc. 13, Book II, Basic Information Defense.

II. The main charge brought against the I.G. is that of having prepared Germany for aggressive war by developing an industry which had as its object the manufacture of synthetic products. The Prosecution fails entirely to recognize the historic development to which this industry owes its origin. Germany had lost her foreign markets as a result of the outcome of World War I. She could therefore only procure the raw materials required for the reconstruction of her industry with the assistance of foreign credits. This resulted in considerable debts in the years after 1939. When these credits were withdrawn from Germany in the course of the world economic crisis, her balance of payments became adverse and she was no longer in a position to buy ^{on} the world market sufficient quantities of the raw materials which were essential to her industry. The difficult situation existing as far as foreign exchange was concerned could not be counter-balanced by increased exports either, because nearly all countries were closing their frontiers against the importation of foreign goods.

The only alternative left to Germany, therefore, was either to lower her standard of living or to attempt to manufacture by the synthesis of domestic raw materials those products which she could no longer obtain from abroad. A voluntary lowering of the standard of living cannot be demanded of an industrious people such as the Germans, which has ^a gift for invention. The only way left was, therefore to replace foreign raw materials

by synthetic products manufactured from materials produced in the country. This was what Germany did. This created the necessity for guaranteeing to the new industries a certain protection against the less expensive natural product at least for the transition period. It is true that a sufficient quantity of these products was available on the world market, but could not be purchased in sufficient quantities by Germany on account of its precarious situation as regards foreign currency. This constituted a repetition of an occurrence which had already taken place in the transition of all modern industrial countries from agrarian to industrial economy. All these countries promoted their industries then by protective customs duties. The development of a country the industry of which was based on natural raw materials into a country the industry of which was based on synthetics represented a similar conversion. It also could take place only under State protection. What happened was therefore entirely dependent on economic conditions and had nothing whatsoever to do with intentions of conquest. On the contrary, it is a voluntary limitation to the means available within the economic system of the country itself. It goes without saying that the increase of the industrial potential which is thus brought about, of necessity involves a simultaneous strengthening of the war potential. However, it is not the purpose of the development, but merely an inevitable consequence which is necessarily involved in it. It is not possible to charge the industrial leaders who take part in such a development with intentions to conduct a war.

If this is established, the assertion of the Prosecution that the I.G. committed a crime against the peace by developing an industry of synthetic materials, loses its validity. The Prosecution obviously recognized this weak point in its argumentation. It therefore went farther than the argument of the manufacture of synthetic products and asserted that the I.G. put its whole production at the service of the preparation and conduct of an aggressive war. The futility of such argumentation follows clearly from the statement by General MORGAN who, as an expert on the subject, declared before the Tribunal on 11 September 1947, I quote:

"It is impossible to draw a sharp line between war and peace materials". Interrogation MORGAN, Transcript, English page 741, German page 706

General MORGAN rightly pointed to the fact that it is possible to forge ploughshares from swords and sickles from spears, but that one could not prevent the reconversion of the ploughshares into swords and the sickles into spears.

The synthetic products manufactured by the I.G. were capable of serving either as ploughshares or as swords. The evidence has proved that they were only intended for use as ploughshares by the I.G. This applies to nitrogen, methanol, gasoline and synthetic rubber.

I restrict myself in the following to an examination of the production of Buna, as the other fields are dealt with by other defense counsel.

III. The Development of Buna Production in Germany.

The Prosecution asserts that, by taking part in the synthetic production of rubber in the I.G., the defendants participated in the mobilisation of Germany for the purpose of conducting a war of aggression. This charge is made especially against the defendant Dr. ter Meer.

Research work on synthetic rubber started in the predecessor firm of the I.G., in the Farbenfabriken Bayer in Elberfeld as early as the year 1906, or thereabouts, and remarkable scientific results were gained even in the years prior to World War I. At the same time this problem was also being worked on in other countries, e.g. England, France and Russia. In Germany at least these were the first experiments to be embarked upon after the first World War. Research in this field was resumed soon after the merger of the I.G. in 1926. ^{The} progress in the spheres of science and technology had demonstrated new possibilities of development. Expenditure for research work fluctuated according to the requirements and to the economic situation. During the grave economic crisis of 1931/1933 which did not leave the I.G. unscathed either, the means available for new developments were of course more limited. However, the research on the synthesis of Buna was never stopped, but continued even during these years, though on a smaller scale.

Exh. ter Meer 111, Doc. ter Meer, 171, Book IV Page 1 -
Examination ter Meer, Transcript, English Page 6953/54,
German Page 7025/7026
Exh. ter Meer 126, Doc. ter Meer, 186, Book IV, Page 48.

The political changeover in 1933 had at first no influence whatsoever on the work on the synthesis of rubber conducted by the I.G.

Interrogation for Meer, Transcript, English Page 6938,
German Page 7038.

But two factors then assumed decisive importance in connection with the large-scale development of Buna production in Germany during the years which followed:

1. the problem of supplies in relation to Germany's currency situation,
2. the favorable results obtained during long years of research.

Hitler succeeded in winning power in Germany by means of promises e.g. the elimination of unemployment. In 1933 his government did, in fact, turn all available resources to the fight against unemployment. This was to be achieved, among other things, by means of the motorization of Germany on the American pattern. While American statistics for the year 1932 showed one automobile for every 4,8 inhabitants, German statistics showed one automobile for every 100 inhabitants. The large-scale motorization of Germany therefore could not fail to appear very tempting and profitable quite apart from any bellicose intentions whatsoever. It promised work and profits and could raise the population's standard of living. It was for this reason that the scheme was given the most energetic support by the government authorities.

Exh. for Meer 112; Doc. 172, Book IV, Page 9

" " " 113, " 173, " IV, " 16

" " " 116, " 176, " IV, " 25

" " " 117, " 177, " IV, " 27

" " " 119, " 179, " IV, " 31

Examination for Meer, Transcript, English Page 6990,
German Page 7039/7041.

The implementation of the motorisation program required large quantities of rubber. Natural rubber was not available or at least not available in sufficient quantities on account of Germany's lack of foreign currency - a menace which increased steadily in the course of the years. ^{The/} Research work in the field of synthetic rubber gave increasingly improved results and made Buna appear as a suitable substitute for natural rubber. It therefore appeared natural and was absolutely within the limits of reasonable economic considerations in time of peace to plan and develop the production of Buna on a large scale.

This was proved in detail by the evidence submitted by the Defense:

The consumption of crude rubber in Germany, - reclaimed rubber excluded - amounted, according to the production returns of the statistical Office (statistisches Reichsamt) to approximately 65 000 tons in 1935, approximately 67 000 tons in 1936, approximately 83 000 tons in 1937 and approximately 96 500 tons in 1938.

Exh. for Meer 123, Doc. 183, Book IV, Page 42.

If the planned Volkswagen project had been carried out, the consumption of tires would have shown additional very considerable increase. Dr. Konrad stated in his affidavit of 8 January 1946 that the Volkswagen alone would have required 65 - 70 000 tons of Buna annually.

Exh. for Meer 118, Doc. 178, Book IV, Page 30.

The purchasing power of the population had increased to a very great extent following the elimination of unemployment. The leather industry was not in the position to satisfy the increased

demand for footwear, as Germany was then not in the position, on account of lack of foreign currency, to import from abroad sufficient quantities of the hides required by the leather industry. It was therefore planned to overcome this difficulty by utilizing Buna for soles and heels. Thus further annual requirements of approximately 12 - 15 000 tons resulted.

Exh. ter Meer 120, Doc. 180, Book IV, Page 34
 " " " 272, " 233, " XIV, " 6
 Examination, ter Meer, Transcript, English Page 6992,
 German Page 7047/7048.

Considerations based purely on peace-time-conditions and the factor involved in private enterprise could not, in the circumstances but lead to annual crude rubber requirements for 1941/42 amounting to 125,000 to 150,000 tons -reclaimed rubber excluded.

Interrogation ter Meer, Transcript, English Page 7 000,
 German Page 7049.

Natural rubber could be procured in Germany only if imported from abroad. The foreign currency required for the import of rubber was not available at all or available only in entirely insufficient amounts. The development of the rubber synthesis was making considerable progress. The tests performance with Buna tires showed more and more favorable results every year, and the production difficulties decrease. Both these factors combined to make the construction of Buna plants appear desirable and justified both to the authorities and to the private entrepreneur.

Interrogation ter Meer, Transcript, English Page 6991,
 German Page 7041

Exh. ter Meer 114, Doc. 174, Book IV, Page 17
 " " " 127, " 187, " IV, " 50
 " " " 128, " 188, " IV, " 63
 " " " 129, " 189, " IV, " 67
 " " " 122, " 182, " IV, " 40.

However, the wishes of the State authorities were by no means always identical in those matters with those of private industry. The authorities pressed for construction on an ever-increasing scale.

Exh. for Meer 145, Dec. 205, Book V, Page 19
 " " " 149, " 209, " V, " 29
 " " " 154, " 214, " V, " 39
 " " " 155, " 215, " V, " 41
 " " " 156, " 216, " V, " 44

Prosecution Exh. 411, AI-4955, Book 25, English Page 17 c under IV and V, German Page 15 (Schacht Exh. 48).

It can be left undecided in this connection, whether bellicose intentions unknown to the I.G. and the defendants were concealed behind these demands from the Highest authority of the Reich. The representatives of the I.G. and in particular for Meer, however, were in favor of slower, more thorough progress in which each advance had been carefully considered and tested. They succeeded moreover, until the outbreak of the war in carrying their point in all essentials.

Exh. for Meer 130, Dec. 190, Book IV, Page 69
 " " " 137, " 197, " V, " 3 (first sentence)
 " " " 154, " 214, " V, " 39
 " " " 156, " 216, " V, " 44a
 Interrogation for Meer, Transcript, English Page 7307,
 German Page 7369.

It was possible as already shown in the foregoing to figure on a German annual consumption of 125 000 to 150 000 tons of rubber or Buna allowing for normal peace-time development. Yet in 1939 at the outbreak of the war the I.G. was constructing production plants with a planned capacity of 40 000 tons per year in Schkopau and 30 000 tons per year in Huel. The plant in Schkopau had just attained the minimum capacity of 24 000 tons per year provided for in the contract with the Reich in the summer of 1939. This represented the maximum production capacity at that time.

Exh. ter Meer 153, Doc. 213, Book V, p.38
ter Meer Interrogation, Transcr. Engl. p.7000/1
German p.7049/500.

The extension of Schkopau and Huels to a total capacity of 100,000 tons per year was decided upon only as a result of the agreement of 21 June and 25 July 1940, i.e. a long time after the outbreak of war.

Prosecution Exh. 550, NI-882, Book 28, Engl. p.56/57, German p.77.

Certain suggestions had already been made at an earlier date, however, on the further expansion of Buna production to 100,000 tons per year, as is shown by a memorandum submitted by the Prosecution, referring to a conference held on 4 April 1939,

Prosecution Exh. 1571, NI-11106, supplement to Book 28.

They were based on the consideration that it would be possible to cover approximately 2/3 of future German rubber requirements, calculated in terms of normal peacetime development, with Buna. The political and economic conditions prevailing at that time, did not admit of the expectation of a change in the German import and foreign currency situation. The Reich authorities, therefore regarded it as imperative that the above-mentioned quantities of Buna be included at the earliest possible date in supplies designed to meet estimated future German rubber requirements. Ter Meer agreed with this opinion. Nothing more can be seen from the memorandum of 4 April 1939. This is shown in particular by page 3 of the document, where, a statement having been made on the technical prerequisites, the following passage occurs:

"There are no obstacles to the incorporation of the 5,000 tons of Buna per month in the tire and technical branches as well as with regard to the cable industry, in the middle of 1940."

Prosecution Exh. 1571, NI-11106, p.3 of the document.

Consequently the memorandum of 4 April 1939 does not show anything which could be interpreted in the sense that the defendant envisaged war or that he had any knowledge, as the Prosecution alleges, of warlike intentions on the part of other authorities.

This plan for expanding production to a capacity of 100,000 tons per year, which was totally detached from military considerations, was frustrated by the outbreak of war, and the target of 5000 tons per month set for the year 1940 was not reached.

Actually approximately 41,000 tons of Buna were produced in 1940. In 1941 Schkopau achieved 42,000 tons and Huels 25,000 tons, making a total of 67,000 tons.

Ex. ter Meer 124, Doc. 184, Book IV, p.44.

All this and in particular the above figures clearly refute the assertion of the Prosecution, that the production capacity for Buna exceeded the capacity planned to cover the requirements of and justified by peacetime development.

Moreover, the interpretation which the Prosecution attempts to put on the facts suffers because they identify the wishes and plans of state authorities for more rapid expansion on a wider scale with the aims and intentions of the I.G. and in particular with those of the defendant ter Meer. This is wholly without foundation. The facts of the case are that the I.G. and Dr. ter Meer did not comply with these requests, but consistently restricted themselves to the limits of what they thought to be economically feasible, without the least thought of an aggressive war.

Interrogation ter Meer, Transcr. Engl. p. 7001/2, German p.7050/51.

In addition, the Prosecution has attempted to prove that the fact that Buna was produced can be explained only by warlike intentions, since its production would have been thoroughly uneconomical in peacetime. The Defense has proved, for its part, that the costs of manufacturing Buna and the price of Buna were commercially sound.

The large - scale manufacture of a product is uneconomical only if either the capital invested in the same does not bear any interest, or if the finished product is so expensive that it can not be sold, or if it imposes too great a strain on the entire economy. None of these assumptions are valid in the case of Buna production.

Schkopau and Huels running at a profit.

Interrogation ter Meer, Transcript Engl.p.7002, German p.7052. The difference in price, which resulted from the manufacture of Buna as against the cheaper natural rubber, which was unobtainable on account of lack of foreign currency, did not prove excessive in any rubber articles manufactured. It amounted for instance in the case of an automobile tire made entirely of Buna, to approximately 9 - 12%. One cannot claim that this caused a major increase in the cost of running an automobile or made such costs prohibitive, since a tire can be used, as everybody knows, for about 30,000 miles.

Exh. ter Meer 143, Doc. 203, Book V, p.16,
Statement ter Meer, Transcr. Engl. p.7002/4, German p.7052/51.

The economic feasibility of the large scale production of Buna was not by any means made possible by uneconomical measures in the first place.

In this connection, the Prosecution attempted to lay special emphasis on the fact that, in its contracts with the Reich, the I.G. was assured of price and turnover guarantees, tax-exemptions, loans and compensation for expenditure made for purposes of research.

Firstly, in so far as the loans granted are concerned, Dr. ter Meer pointed out during his interrogation,

Interrogation ter Meer, Transcr., Engl. p.7005, German p.7055, that since the middle of the thirties, the capital market in Germany was reserved for the parcelling out of Reich loans and was thus closed in the main towards private loans. At that time it was extraordinarily difficult to increase capital or to obtain permission to raise loans on fixed rates of interest. Consequently the I.G. had to make use of the offer of the Reich and accept the loan which was governed by perfectly regular banking conditions (5% interest, amortisation in 10 uniform yearly payments) because the I.G.'s assets were not sufficiently liquid to enable it to pay the entire costs of the new installation from its own funds. The fact that the Reich itself obtained the means for the loan by imposing a moderate duty on imported natural rubber was nothing unusual. Other countries too, generally protect their new industries by means of high tariffs. Thus for instance, the duty imposed on dyestuffs which were imported by the U.S.A. after the first World War, in order to protect their young dyestuffs industry, were assessed at about 200%, being later reduced to 100%.

Interrogation ter Meer, Transcr. Engl. p.7003; German p.7053;
 " p.7005, " p.7055f.
 " p.7009, " p.7059
 Exh. ter Meer 130, Doc. 190, Book IV, p. 68/69.

The price and turnover guarantees were purely a precautionary measure, which appeared necessary as long as the new industry was not protected by import duties, and which never assumed any practical importance.

Interrogation ter Meer, Transcr. Engl. p.7606, German p.7056,
" " p.7009, " p.7060.

In the case of the tax-exemptions, no special measures for Buna were involved; the case was rather one in which the general law governing tax-reductions was applied. This law was issued by the Government in July 1933 in order to give an impetus to commerce and industry and thus to contribute to the elimination of unemployment. Amongst other things, it provided for tax reductions for those enterprises which had existed before 20 July 1933 and which developed new manufacturing processes or manufactured new kinds of products. The commencement of the manufacture of Buna by the I.G. or its subsidiary companies established for this purpose represented precisely such a case.

Exh. ter Meer 112, Doc.172; Book IV, p.10
" " " 142, " 202; " V, " 13
" " " 141, " 201, " V, " 10
Interrogation ter Meer, Transcr. Engl.p.7006, German p.7056.

Finally, as far as the alleged payment of an allowance to defray research expenses is concerned, no payments as such were made; the matter in question was merely an agreement which stipulated the extent to which the I.G. was permitted to include in the price of Buna the amounts spent during years of research on rubber synthesis. In this matter the firm was not a free agent and could calculate only a proportion

of the costs of the experiments made in Gschkopau in its costing.
To what extent this is to be regarded as an unusual, nay, even
an unlawful advantage, it is impossible to state.

Prosecution Exh. 558, NI-6343, Book 23, Engl.p.126, German p.199
Exh. ter Meer 126, Doc.186, Book IV, p.48
Interrogation ter Meer, Transcr. Engl.p.7006, German p.7056/57.

The Prosecution has attempted to create the impression
that the entire subject of Buna manufacture after 1933 was purely a
problem of re-armament, which owed its development solely to
collaboration with the Wehrmacht and the pressure exerted by the
Government authorities connected with the army. Consequently it
appears necessary to investigate in some detail the statements on
the subject which occur in the Prosecution Trial Brief Part I
(p.35 ff).

The statement contained on

p. 35 of Prosecution Trial Brief I

creates the impression that it was the I.G. which first approached
the Military authorities. This is incorrect, as is shown by:

Prosecution Exh. 95 NI-306, Engl.Book 5; p. 17
German " 23, p. 17 .

The first sentence of that document reads as follows:

"In reply to a verbal enquiry received by him from a
representative of the Army Ordnance Office, Dr. Mueller-
Conradi of Ludwigshafen wrote to the Army Ordnance Office,
Berlin-Charlottenburg a letter dated 15 August 1933".

The document mentioned appears in

Prosecution Exh. 545 NI-6930, Book 28, Engl.p.1, German p.3

All it reveals is that, in 1933, basing its judgment on the results
of its laboratory work, the I.G. decided that the production of
synthetic rubber

promised considerable success and that it (the I.G.) was ready to carry out its experiments on a larger scale if supported in this work by the Government. There is no mention of any kind of military considerations whatsoever in the letter. The fact that such motives were not decisive for the I.G. is further shown by

Prosecution Exh. 546 NI-4713, Book 26, Engl. p. 5, German p. 12, in which the proof is incontrovertible. ^{According} to these minutes of a meeting held in the Army Ordnance Office on 20 February 1935, the representative of the I.G. replied to the demand of the representative of the army that "the Wehrmacht claims the right of absolute leadership in the question of synthetic rubber", by pointing out expressly that "rubber is needed for peacetime purposes and for reasons of foreign currency." In fact, the Wehrmacht did not insist on its demand at all in the period which followed and for a time even opposed the development of Buna-production. This is shown particularly clearly in the letter of 13 January 1937 from Dr. Kuehne to Dr. ter Meer from which an excerpt is quoted by the Prosecution in its Trial Brief, Part I, page 36,

Prosecution Exh. 552, NI-4626, Book 26, Engl. p. 92, German p. 133. In face of this opposition, Dr. ter Meer described in detail in his confidential reply to Dr. Kuehne, dated 18 January 1937,

Exh. ter Meer 167, Doc. ter Meer 227, Book V, p. 62, the reasons which made the civilian authorities urge greater speed in the erection of Buna factories and which justified the erection of these plants in the eye of the I.G. from the point of view of private enterprise. If Dr. ter Meer points out in this letter that the continuation of work

under the Government motor vehicle program and the further operation of the automobile industry and its sub-contractors depended on the supply of the necessary amounts of rubber, in the procurement of which economy in foreign currency was to be borne in mind, he must have had only years of development for peacetime requirements in mind and certainly not a war, let alone of the preparation of aggressive warfare.

Furthermore, the circumstance that in 1934 the Reich War Minister made approximately 1 million Reichsmarks available for the conduct of road tests with Buna, cannot be regarded as being extraordinary or suspicious from the point of view of the Prosecution. The amount was not by any means granted to the I.G. for the conduct of experiments with synthetic rubber (as might be thought on considering p. 35 of the Prosecution, Trial Brief) but was provided for in the budget of the Wehrmacht for the road tests to be carried out with the new Buna tires by the Wehrmacht itself.

Prosecution Exh. 562, NI-7472, Book 29, Engl.p.4, German p.33. At the same time, and quite independent from the above there were the very considerable expenses incurred by the I.G. and other parties interested in the development of the new synthetic material, such as for instance the tire industry, the Reichsbahn, the Reichspost, and the Berlin Bus Service in the course of their own tests. The expenses of the I.G. amounted between 1927 and 1938 to 28,921,000 Reichsmark.

Exh. for Meer 126; Doc.186, Book IV, p.48
" " " 160, " 220, " V, " 50.

Naturally the I.G. did not oppose the conduct of road-tests by the Wehrmacht.

I.G. was interested in having tests made with the new material on as large a scale as possible in order to establish its usefulness and to improve it. This was a perfectly natural interest from the point of view of private business which - looking at it then - made the inclusion of Wehrmacht offices appear as absolutely harmless and expedient.

How little attention, quite apart from that, was paid to military requirements in the building up of Buna production, is shown particularly clearly by the choice of location for the Huels plant, which is situated 22 English miles from the Dutch border.

Exh. ter Meer 169, Doc. 229, Book V, page 71

and the fact that the expansion of Buna production was not carried out secretly but under the eyes of the public. I.G. deliberately invited custom on the civilian market employing the customary methods. Thus it displayed Buna products in 1936 at the automobile exhibition in Berlin and in 1937 of the World's Fair in Paris "in order to inform the public what it had achieved in the field of the synthetic rubber production"

Exh. ter Meer 160, Doc. 220, Book V, page 49

" Ambros 31, Doc. 123, Book CA I, page 61.

It arranged scientific lectures on Buna, for instance to the International Chemistry Congress in Rome in 1938, before the Societe des Ingenieurs Civils de France et la Societe de Chimie Industrielle in Paris in 1939 and before the American Chemical Society in Baltimore in 1939.

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Exh. ter Meer 111, Dec. 171, Beck IV, page 1
" " " 179, Dec. 177, " VI, page 38
" Ambros 29, Dec. CA 124, Beck Ch. I, page 62.

Press representatives were shown around the Schkopau plant

Exh. ter Meer 165, Dec. 225, Beck V, page 56
" " " 166, " 226, " V, page 59.

Experiments were made on a large scale with the aid of the rubber processing industry.

Exh. ter Meer 127, Dec. 187, Beck IV, pages 53, 54, 55, 58, 60, 61, 62
" " " 120, Dec. 180, Beck IV, page 36
" " " 121, Dec. 181, Beck IV, page 38.

Not even the Prosecution have asserted that all these measures were camouflage tricks.

Finally, the allegation made by the Prosecution that the German Army had relied almost entirely on I.G.'s synthetic rubber and that as a result of its work in this field Germany had had no difficulties on the outbreak of war as far as stocks of rubber were concerned, is wrong, too.

Prosecution Trial Brief, Part I, Page 37.

In reality the stocks of natural and synthetic rubber which were available in Germany on the outbreak of the war, corresponded to no more than two months' ^{normal} /peace time requirements.

Exh. ter Meer 168, Dec. 228, Beck V, page 67 (NI-6194).

The Buna production plants of I.G. were not by any means in a position on the outbreak of the war, to meet the increased requirements of the war. From the point of view of German strategy the situation would have been desperate had there been no stringent rationing and had it been impossible to

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procure considerable quantities of natural rubber as ~~best~~ from the western occupied territories (Holland, Belgium, France) and through import from abroad.

Exh. for Meer 168, Dec. 228, Beck V, page 67 and following page Prosecution Exh. 1896, NI-7670, page 13, referred to in the minutes of the conference, Engl. page 7277, German page 7337.

It was not therefore to the credit of I.G. that the German Government succeeded in overcoming the difficulties in the procurement of rubber.

Apparently the Prosecution themselves have recognized the weakness of their allegations on page 37 of the Trial Brief. In Dr. for Meer's cross-examination,

Interrogation for Meer, transcript, Engl. page 7276,
German page 7336,

the Prosecution have therefore made the attempt to argue that "the war had started a little too soon" and " thus the early requirements failed to be met by the actual Buna production", while the plans for the expansion of production had been adjusted to the mobilization plans of the Wehrmacht as early as 1938. We do not contest that there may have been in Buna production, as in all fields of industrial production, government plans for mobilization, i.e. for the event of war.

No more than that is shown by

Exh. 1895, NI-13515

submitted by the Prosecution to ter Meer during cross-examination. It is completely wrong to draw therefrom conclusions as to I.G.'s aggressive plans.

If ter Meer in a lecture delivered in September 1941,

Prosecution Exh. 1896, NI-767C

remarked that "tho^wwar had started a little too soon as far as the possibility of meeting Germany's military/^{rubber}requirements from own production was concerned" he merely gave expression to a conviction gained during the war. The situation was simply that Germany was unable to meet the rubber requirements from her own economy, while a few years later she might have been able to do so with the aid of the Buna plants which were still in course of construction, albeit by considerable rationing^{cf}/civilian requirements. More than that cannot be read into ter Meer's expression "zu frueh" (too soon). The defendants and the firm they directed were just as little interested in a war with respect to Buna production as with respect to any other field: their plants were planned and built by them for peace time requirements.

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We are not disregarding the fact that after the outbreak of the war Buna production undoubtedly helped to support the German war effort. But no charges can be brought against the defendants as if they had committed a punishable offence, because of that. The expansion of the production capacity of Buna after the outbreak of the war was due to government orders.

Prosecution Exh. 1408, NI-11781, Beck 72, page 1
" " 550, NI- 882, " 28, English pages 56/5
German page 77.
Interrogation ter Meer, transcript, English pages 7030/32,
German (sic) page 7080

They had to be carried out. Refusal would have been regarded as sabotage with all its resultant consequences.

Defense Exh. 263, Dec. Economic Control 69, Beck III,
page 23,
Defense Exh. 205, Dec. Economic Control 14, Beck I
page 28 (Par. 3b).

The Prosecution have submitted, in their Dec. Becks 28 and 29 a large number of documents which have not been mentioned here. A number of documents have on the other hand been submitted as evidence by the Defense, especially on the negotiations between I.G and government authorities in ter Meer Becks IV and V to supplement and refute the documents submitted by the Prosecution. But it did not appear necessary to go into all these documents again within the scope of the Closing Brief. In his interrogation before the Tribunal,

Interrogation ter Meer, transcript, English pages 6938-6956
German pages 7008-7026
English pages 6988-7032
German pages 7038-7061

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Dr. ter Meer has already discussed them in such detail that it would seem to be sufficient to refer you to them once again.

D. Collaboration with the Wehrmacht.

The relationship between I.G. and the Wehrmacht has already been mentioned in passing in the above discussion of Buna production. The Prosecution have attached special importance to this question in this context as well as elsewhere, particularly in their argumentation in connection with Vermittlungsstelle W and with the inclusion of I.G. in general government mobilization planning. I have dealt with the subject in detail in my plea on behalf of the defendants as a whole. It would be a mistake to draw from this the conclusion that the defendant ter Meer had been particularly implicated in these charges, as I shall show in the following pages. Collaboration between the I.G. and the Wehrmacht which, it is alleged by the Prosecution, served the purpose of preparing for aggressive warfare, is supposed to have affected particularly the following matters:

- 1) Vermittlungsstelle W
- 2) Drawing up of mobilization plans
- 3) Security measures
- 4) Air raid precautions.

These subjects will therefore be discussed now.

1) Vermittlungsstelle W.

In Section IV B of the preliminary memorandum brief submitted by the Prosecution on 6 December 1947 the establishment of the Vermittlungsstelle W in Berlin is adduced as evidence for the close collaboration between the I.G. and the Wehrmacht.

The Defense do not deny that the Vermittlungsstelle W was set up for the purpose of transacting current business between the plants and other I.G. offices on the one hand and the authorities and the Wehrmacht on the other. They do, however, deny that by setting up the Vermittlungsstelle W I.G. took the initiative in preparing for mobilization.

The idea behind the establishment of the Vermittlungsstelle W was the need, in an enterprise of the size of I.G., including as it did countless plants, for internal coordination.

Interrogation ter Meer English transcript page 6921

German transcript page 6992

Interrogation Diekmann, English transcript page 2200/1

German transcript page 2194/95

Duplication of work was to be avoided.

Interrogation Gorr, English transcript page 2682,

German transcript page 2682.

Several witnesses have testified that in very many cases the activities of the Vermittlungsstelle W amounted to little more than the forwarding and delivering of mail.

Interrogation Wagner, English transcript page 581,

German transcript page 552,

Interrogation Diekmann, English transcript page 2201/2,

German transcript page 2195/6,

Interrogation Gorr, English transcript page 2690,

German transcript page 2690.

That was the reason why its staff was small.

Prosecution Exh. 99, NI-2747, Book 5, English page 77, German page

Interrogation Wagner, English transcript page 581/2, German transcript page 553.

One of the junior Procureurs of the I.G., Dr. v. Bruening, was temporarily attached to Vermittlungsstelle W in Sparte II business, not because Vermittlungsstelle W was particularly important, but because I.G. wanted to give him a chance of widening his horizon.

Interrogation ter Meer, English transcript page 6919,
German transcript page 669C.

The Vorstand members as a whole were not particularly interested in the activities of Vermittlungsstelle W.

Interrogation Wagner, English transcript page 580,
German transcript page 551

Interrogation Diekmann, English transcript page 2203/4
German transcript page 2197

The chairman of the Technical Committee, Dr. ter Meer, visited the Vermittlungsstelle W for the first time after the outbreak of war. The work of the Vermittlungsstelle W was considered as of secondary importance.

Interrogation Struss, English transcript page 1862,
German transcript page 1848

All these statements prove that the Vermittlungsstelle W was not as important as the Prosecution assert. The Vermittlungsstelle W did not by the way work exclusively with Wehrmacht departments but also with government departments such as the Reich Ministry for Economic Affairs and with the Reich Offices (Reichsstellen) such as the Reich Office for Chemistry.

Prosecution Exhibit 141, NI-7611, Beck 6, English page 32,
German page 46.

On page 37 of the affidavit made by Dr. Gerr there is a list of the activities and tasks of the Vermittlungsstelle W. Intensive interrogation of witnesses in cross-examination has largely clarified the position.

Interrogation Wagner, English transcript page 577/622,
German transcript page 549/591,

Interrogation Struss, English transcript page 1852/63
German transcript page 1838/49,

Interrogation Diekmann, English transcript page 2199/2226,
German transcript page 2194/2219

Interrogation Gerr, English transcript page 2681/2698,
German transcript page 2681/2698.

2) Mobilization plans.

The defendants and the I.G. which they directed are also supposed to have taken the initiative in drawing up mobilization plans thus participating in the preparations for aggressive warfare.

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The Defense have, however, shown that the I.G. carried out their undeniably extensive work in connection with mobilization plans solely at the instance of the authorities, and that the defendants could not possibly have guessed from such work - if they knew of it at all - that the government then in power had plans of aggression or of expansion.

a) The mobilization plans and their predecessors, the so-called production returns (Produktionsstatistische Erhebungen) were not due to I.G. initiative. The first production return was drawn up in 1934 for 1933 in accordance with instructions issued by the Reich Minister for economic affairs through the Reich Office for Statistics. It applied to all branches of industry, and therefore to the chemical industry, and individual firms were compelled to compile the return by reference to the decree on the compulsory supply of information, dated 13 July 1923. It was the ostensible object of these returns "to procure statistics of the industrial structure of Germany and on the economic interconnection of the various branches of industry"

Exh. ter Meer	88,	Doc.	406,	Book	XI,	page	1
"	"	"	89,	"	407,	"	XI, page 2
"	"	"	93,	"	411,	"	XI, page 26
"	"	"	84,	"	402,	"	X, page 1
"	"	"	85,	"	403,	"	X, page 19
"	"	"	86,	"	404,	"	X, page 31
"	"	"	87,	"	405,	"	X, page 43
"	"	"	76,	"	275,	"	II, page 84

Interrogation Struss, transcript, English page 1852/53
German page 1838/1840

I.G. were not at all agreeable to surrender their business secrets on production, raw materials requirements, sales, stocks etc. They attempted time and again

to curtail the obligations imposed upon them to supply information. Dr. ter Meer in particular refused to betray definite plant secrets such as the composition of the so-called contact substances for catalytic processes. This caused serious differences of opinion with the authorities.

Exh. ter Meer 94, Doc. 412, Beck XI, page 29,
 " " " 95, " 413, " XI, " 38
 " " " 96, " 414, " XI, " 39
 " " " 98, " 416, " XI, " 43
 Interrogation ter Meer, transcript, English page 6902/04,
 German page 6970/72.

Generally speaking I.G. was, however, forced to yield to government compulsion, since a refusal would have been interpreted as sabotage with all its resultant consequences.

Interrogation ter Meer, transcript, English page 6902,
 German page 6971.

In 1937 the so-called mobilization plans took the place of the production returns. Such mobilization plans were drawn up by the Reich for practically all industries;

Exh. ter Meer 75, Doc. No. 274, Beck II, page 80,
 Interrogation Struss, transcript, English page 1854,
 German page 1841

and also for the whole of the chemical industry. At the instance of the Wehrmacht they were drawn up for the latter by the Reich commissioner for Chemistry, Dr. Ungewitter, in consultation with the Reich Ministry for economic affairs and the Reich War Minister.

Exh. ter Meer 82, Doc. 281, Beck II, p. 106
 " " " 77, " 276, " II, p. 87
 Interrogation Huehnermann, transcript, English page 13496,
 German page 13789

The character of these mobilization plans and their history is shown by the following documents:

Prosecution Exh. 195, NI-8608, Beck 8, English page 17,
 German page 12,
 " " 197, NI-4632, Beck 8, English page 21,
 German page 16,
 " " 218, NI-8601, Beck 8, English page 68,
 German page 83,
 " " 219, NI-8889, Beck 8, English page 70,
 German page 86

All I.G. had to do was therefore to supply the figures on the basis of which the authorities drew up the plans. When the government authorities had drawn up the mobilization plan it was transmitted to the factories concerned as a so-called mobilization task. It had all the characteristics of a government order.

Prosecution Exh. 22C, NI-7287, Book 8, English page 83, German p. 95

Exh. ter Meer 11C, Doc. 428, Book XI, page 78.

Information required in connection with the mobilization plans was supplied by so-called confidential agents (Vertrauensmaenner) in the plants who were appointed by the government. The affidavits deposed by the two confidential agents of the Leverkusen plant have been submitted as

Exh. ter Meer 78, Doc. 277, Book II, page 91,
Exh. ter Meer 79, Doc. 278, Book II, page 93.

Apart from that, the defendant ter Meer has made a statement on mobilization planning as a whole in the witness box on 12 February 19

Interrogation ter Meer, transcript, English page 6903/8
German page 6974/77.

With the exception of work in connection with the mobilization plan for dyestuffs production Dr. ter Meer himself had nothing to do with I.G. mobilization planning. He did not know details about it at the time. The office of the technical committee had merely dealt with the queries of the Reich Office for Statistics in connection with the production returns. But the so-called distribution plans (Belegungspläne) and the mobilization plans were at a later date processed by the Vermittlungsstelle W in Berlin in direct contact with the officially appointed confidential agents in the plants. The confidential agents in the plants were bound by security regulations and were not allowed to discuss these matters with Dr. ter Meer.

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As Dr. ter Meer was not works manager, he did not come into contact with them much.

Interrogation for Meer transcript English page 6908/9,
German page 6977
Exh. ter Meer No. 82, Document 281, Book II, page 106.

This also explains how Dr. ter Meer came to make detailed statements on the matter in his Krensberg declaration

Pres. Exh. 334, NI-5187, Book 12, English page 107,
German page 126

and in his interrogations before the opening of the trial

Exh. ter Meer 74, Dec. 66, Book III, (NI-5185), page 25.

In his interrogation

Interrogation for Meer transcript English page 6909/612
German page 6978 - 6982.

Dr. ter Meer has explained in detail how he came to make these somewhat inaccurate statements, so that it would seem to be unnecessary to go into the matter again here.

In connection with mobilization planning the Prosecution have accused Dr. ter Meer of having taken a particularly active part in the drawing up of the mobilization plan for dyestuffs. They have referred in this connection to their

Pres. Exh. 198, NI-8777, Book 8, English page 25, German page .
The Defense do not deny that the data for the I.G. mobilization plan for dyestuffs were compiled in the Office of the technical committee, of which Dr. Struss was the head, by the latter's assistant, Dr. Eichwede. That happened, after the Reich Commissioner for Chemistry, Dr. Ungewitter, had asked the I.G. to submit proposals for a mobilization plan for dyestuffs.

Exh. ter Meer 82, Dec. 281, Book II, page 107,
" " " 80, Dec. 279, Book II, page 96.

The dyestuffs trade, in view of the great number of dyestuffs produced (more than 2000 per year), and the close overlapping of raw materials and technical equipment used, and owing also to the extent of the export, was particularly complicated. It was to be expected that in the event of war it would suffer particularly. There was not sufficient basis for a complete supply of requirements at the various works. For reasons of expediency it was therefore decided that the working out of the mobilization plan Dyestuffs should be done through the Office of the Technical Committee, where appropriate statistical and calculatory records on all dyestuffs and their intermediates were available.

Examination Dr. ter MEER Transcript English P. 6914, German P. 6983
 " STRUSS " " P. 1856/57
 German P. 1842/3.

Contrary to the unproven statement by the Prosecution, I.G. had never carried out further mobilization work beyond the official requirements. I.G. neither suggested production plans being made nor did it welcome nor did it welcome the drafting of such Plans. On the contrary, the extensive work involved on it for them was only considered an irksome disturbance of normal business.

Exh. ter MEER 75, Document 274, Book II, P. 82/83
 " " " 77, " 276, " II, P. 89
 " " " 78, " 277, " II, P. 92

The mobilization planning was based on the experiences of the first World War and followed the example of the measures then adopted by the War Raw-Materials Office at the suggestion of Walter RATHENAU. It was already then recognized that in modern technical war not only a military, but also a comprehensive economic and in particular industrial planning and steering is necessary. This was therefore

prepared by the Government, in case of a new war, in the course of the rearmament of Germany, which started in 1933 and was tolerated by foreign countries, and mobilization planning served this purpose.

Examination ter MEER Transcript English P. 6903/4
German P. 6972/3.

This has nothing to do with an aggressive war. It is just as necessary in a defensive war. Further explanations in this respect are superfluous (especially today) as it is generally well known that extensive mobilization planning is being carried out in all countries (particularly in the USA).

Mobilization plans as such are therefore neither good nor bad; unless war is regarded, always and for both parties, as criminal. They only become blameworthy if they are meant to serve the criminal purposes of an aggressive war, and participating in their creation desire, or at least know of this.

The defendants could therefore only be reproached for I.G.'s participation in the German mobilization planning (by preparation of production plans for their various works) if it could be proved that work was carried out in the knowledge of HITLER's aggressive plans. This has not been proved. In particular, the allusion by the Prosecution in this connection to the two reports from the Reich Ministry of Economics on the "State of the economic mobilization" September 1934 and December 1937 submitted by them,

Pres. Exh. 716, EC-128, Book 38, English P. 94, German P. 124
 " " 719, EC-258, " 39, " P. 10, " " 18

falls. Both of these reports originate not from the I.G., but from the Reich Ministry of Economics. Classified as "Top Secret" (Geheime Kommandosache or "Geheime Reichssache"), they came under the most secret measures and apparently only very few copies were made. No evidence has been produced that they ever came to the knowledge of I.G. or one of the defendants. According to all the facts, this seems to be entirely out of the question, and was explicitly confirmed by Dr. ter MEER in his examination.

Examination ter MEER Transcript English P. 6916/18
 German P. 6905-6907.

Nothing can therefore be gathered from these reports to the effect that the defendants knew about HITLER's intention of waging war.

On behalf of the defendant ter MEER, earlier reference was made in another connection to the accusation of knowledge of these political aims of HITLER (compare P. 27-33). With regard to the other defendants, reference is made to the statements of their various defense counsel. It may only further^{be} mentioned here that even those so-called confidential persons who were entrusted with the preparation of the mobilization plans in the I.G. plants never dreamed that their work was to serve the preparation and

conduct of an aggressive war.

Exh. ter MEER 78, Document 277, Book II, P. 92
 " " " 81, " 280, " II, P. 100
 Examination GORR, Transcript Eng. P. 2688/9, German P. 2687/8
 " " " " P. 2225/6, " P. 2219.

b) War supply contracts.

War supply contracts also belong to the field of mobilization planning. These are State orders distributed to private firms which should automatically come into force in the event of war. It was a matter of complete indifference who started the war. The existence of such contracts can therefore give no indication that there were aggressive intentions.

Prosecution Exh. 219, NI-8889, Book 8, Engl. P. 70, German P. 89
 For the rest, the case of I.G., they made up only a tiny percentage of their plants' capacities.

Examination GORR, Transcript English P. 2686, German P. 2686
 " ter MEER, " " 6917/18
 German P. 6987.

The large Leverkusen plant had only very few of such contracts, probably only three.

Exh. ter MEER 83, Document 282, Book II, P. 110.

The Prosecution themselves have only submitted one such contract in Pros. Exh. 211, NI-8878, Book 8, English P. 51, German P. 54.

It deals with the supply of smoke-producing acid (trioxide-chlorosulfonic acid solution) which was to be carried out by the Hoechst plant.

Dr. ter MEER's efforts now, during this trial, to find out whether there were other contracts of this kind before the outbreak of war, were unsuccessful.

Examination ter MEER, Transcript English P. 6917/18, German P. 6987,

c) Development orders (Entwicklungsaufträge).

The so-called development orders also fall into the category of planning for mobilization. They consisted of orders issued by the Wehrmacht for work on certain problems which was to be carried out in the research laboratories of the industry concerned. The character of those received by the I.G. was clearly exposed by Dr. Gerr under No. 5d of his affidavit of 3 June 1947.

Prosecution Exhibit 141, NI-7611, Beck 6, English page 32a, 32b
German page 51

During his examination on 24 October 1947, Dr. Gerr described the extent of the development work "as not without significance, but not especially vast either, as might naturally have been expected in consideration of the importance of the I.G."

Interrogation Gerr, transcript, English page 2682, German page 2682.

This statement is confirmed by a report of 8 June 1939 which was prepared by Vermittlungsstelle W.

Prosecution Exh. 166, NI-4669, Beck 7, English page 1, German page 1

This report reveals that the number of I.G. chemists employed on development orders of the Wehrmacht, was very small compared with the total number of chemists employed by the I.G. on scientific research work.

Exh. ter Meer 45, Doc. 59, Beck III, page 12.

The report shows furthermore that some of the work for the Wehrmacht was carried out as a sideline and that it consisted in many cases of "minor laboratory experiments" which involved "little expense" and could be completed "within a short time, that is, by a chemist and a female technician within a few days".

Prosecution Exh. 166, NI-4669, Book 7, English page 5/6, German page 6.

The above facts make it abundantly clear that the development work performed by the I.G. for the Wehrmacht was not important.

It goes without saying that the Wehrmacht which does not have trained experts at its disposal must appeal to all industries of the country in order to press forward its development work. This is the case in all countries.

3) Secrecy. -

The Prosecution believe that/ ^{they} /can see further circumstantial proof of the supposedly bellicose intentions of the I.G. and the defendants responsible for them in the secrecy measures carried out within the I.G. This attempt of the Prosecution cannot be sustained. Every state keeps matters connected with its armament secret and protects them by laws against espionage and by provisions directed against high treason. All inhabitants of a country must abide by these laws.

In addition, however, every enterprise also tries in its own interest to protect its works against the divulgence of secrets concerning its business methods and production processes. This right is a generally accepted principle - e.g. the regulations on unfair competition. No exception can be made for the I.G. in this respect. Otherwise it would be put without any justification into an exceptional position unfavorable to itself.

The danger of prejudice to their interests as a result of industrial and economic espionage on the part of disloyal employees or competitors at home or abroad is always considerable in the case of enterprises of the size of the I.G. plants. This becomes particularly apparent in times of unrest, as is shown by the experiences after World War I. The predecessors of the I.G. therefore established as early as 1921 a Central Office "For the Suppression of Illicit Export (illegal practices), Falsification of Goods and Divulgence of Business Secrets and Secret Processes." Its activity was restricted exclusively to security.

Exh. ter Meer 62, Doc. 262, Book II, page 48.

In 1936 this office under its old chief Horbeck was attached as Department A (Abwehr - security counter intelligence) to the Vermittlungsstelle W which is dealt with in another connection. Its duties remained unchanged. It restricted itself, just as before to security and counter intelligence, the fighting and prosecution of offenses which were punishable in accordance with German Criminal Law in the fields of unfair competition and economic espionage. It was natural that the State regulations on secrecy also had to be observed in this respect in the plants of the I.G.

These regulations had been made considerably more stringent.

Exh. ter Meer 64/65, Doc. 264/265, Book II, page 54/6C.

There existed a draft of a law on economic high treason and on the extension of the rulings

governing on military high treason. It was to be introduced with retroactive force, according to the statements of the leaders of the State. All this could not but induce industry to be very cautious in this connection. During his examination, Dr. von Knieriem made a detailed statement on this point, bringing evidence to substantiate his statement. For this reason it would be superfluous to go into the subject in detail again here.

Examination v. Knieriem, Transcript, English P. 6514-6522
German P. 6563-6575.

The State superintended the observance of its regulations through the intermediary of military counter-intelligence offices and by means of the appointment of confidential agents (Vertrauensleute) in the individual plants which it held responsible for offenses against its orders. Such orders were constantly being issued. Examples of this were submitted in

Exh. ter Meer 66 - 72, Doc. ter Meer 266 - 272, Book II,
Pages 61/77.

Almost without exception, the I.G. plants were not armaments plants but so-called K. and L. plants, i.e. plants vital to the war effort and to the general economy, plants which were of general importance to the national economy in time of peace as in time of war. The confidential agents or security officers for these plants were appointed by the Branch Offices of the Reich Ministry of Economics in the headquarters of the (Regierungspräsidenten, later known as Regional Economics Offices (Landeswirtschaftsämter) as was the case in the plants of the power industry, the industry of rocks and earths, the textile industry, the iron processing industry etc.

Exh. ter Meer 73, Doc. 273, Book II, Page 78.

The I.G. did not have any exceptional position in all these things. It neither caused the State regulations on secrecy to be drawn up nor did it further them on its own initiative. No proof whatsoever has been submitted of the truth of the Prosecutions assertion to the contrary. It cannot be considered a punishable offense on the part of the defendants that they obeyed the official secrecy regulations, especially as they did not and could not know that there was a possibility that the leaders of the State were making use of those regulations in the pursuit of criminal aims to engage in warfare.

The defendant ter Meer personally had little to do with the field of secrecy. He was, after all, not manager of a plant and probably for this reason was not bound to observe particular secrecy even before the outbreak of war.

Examination ter Meer, Transcript, English page 6896, German Page 6964.

The collaboration in the establishment of Department A in Vermittlungsstelle W with which he is charged in the Indictment (Section 20) consisted merely in appending the second signature to the letter in which the plants of Sparte 2 were informed of the establishment of

Department A. Dr. ter Meer had no part in drafting the letter. Neither did he ever exercise any influence on this department's activity. Fritz

Faubel who was head of Department A from March 1937 to February 1940 neither saw nor spoke to Dr. ter Meer during this time. He did not receive any instructions, /
ceive/either directly or indirectly for the conduct of his work and has no official connection with him.

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Exh. for Meer 62, Document 262, Book II, Page 50,
Exh. for Meer 63, Document 263, Book II, Page 51.

Dr. for Meer did not concern himself at all with the activity of this department. It was neither attached to him personally nor did he have any supervisory duty in connection with it.

Examination for Meer, Transcript, English Pages 6896/7,
German Page 6966.

4. Air Raid Precautions.

The Prosecution charges the I.G. with having "on its own", taken air raid precaution measures and thereby also in this sphere participated in a crime against the peace.

The Defense has demonstrated that it was not the I.G. or the defendants who took the initiative for the introduction of air raid precautions and the construction /work involved therein/ but that the I.G. until the outbreak of war followed only hesitatingly and with reserve the orders issued by the authorities.

The organization of civilian air raid precautions was expressly permitted to Germany on the basis of the Paris Agreement on Aviation of May 1926.

Exh. for Meer 51, Document 251, Book II, Page 1,
Exh. for Meer 56, Document 256, Book II, Page 21.

On the basis of this permission air raid precautions had been organized in Germany on government orders ever since 1931. The "industrial air raid precautions" formed a special field within the framework of these civilian air raid precautions. It was also under the local police administrators and therefore under the government. The Reich Association of German Industry (Reichsverband der deutschen Industrie)

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and later the Reich Group Industry were appointed to advise the plants in this respect. They published memoranda since 1931, and the various industrial enterprises in their air raid precautions had to follow the directions contained therein. Moreover, from 1935 onward air raid precautions were State regulated by a Reich law and by implementation / ^{decrees} issued in connection with them.

Exhibit for Moor 52 - 61, Document 252-261, Book II, Pages 7 - 45.

The I.G. kept within the limits of these authoritative instructions. When, in the course of the prewar years, some "Regional Air Raid Precaution Offices (Luftschutzbereichsstellen)" were seen to be making locally very extensive demands, the I.G. Works Hoechst, with the defendant Jachne as the chairman of the Engineering Committee (Toko), was made the central location for all air raid precaution matters of the I.G. This measure was intended to prevent the various plants of the I.G. yielding to excessive local demands.

Exh. for Moor 51, Document 251, Book II, Page 5,
Examination for Moor, Transcript, English Pages 6886-6888,
German Page 6957,
Examination Poehn, Transcript English Pages 10049/51,
German Page 10188.

The defendant had to do with air raid precautions only in so far as he had, as head of the Technical / ^{Committee} (Toc), to bring up for discussion the credit applications for Air Raid Precaution measures submitted by the various plants.

Examination for Moor, Transcript, English Page 6888/89,
German Page 6956.

The Technical Committee, like Herr Jachne and other I.G. agencies, always adopted a very reserved attitude towards the credit applications for air raid precautions.

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Exh. for Meer 51, Document 251, Book II,
Prosecution Exh. 174, NI-4838, Book 7, English Page 23,
German Page 46,
Prosecution Exh. 179, NI-4451, Book 7, English Page 32,
German Page 79;
Prosecution Exh. 170, NI-8461, Book 7, English Page 10,
German Page 2/3;
Examination for Meer, Transcript, English Pages 6888/89,
German Page 6957.

Dr. for Meer participated neither actively nor as a spectator in the air raid precaution plan exercises, wrongly described by the Prosecution as "War Games". These plan exercises were carried out on the instructions of the authorities in accordance with the directions given by the Reich Association of German Industry.

Examination for Meer, Transcript, English Page 6889,
German Pages 6957/8;
Examination Struss, Transcript, English Page 1859/60;
German Pages 1846/47,
Exh. for Meer 51, Document 251, Book II, Page 5,
Exh. for Meer 59, Document 259, Book II, Page 38.

For the rest, regarding the question of I.G.'s participation in air raid precaution measures, reference is made to the explanations given on this point by the Defense Counsel of the defendant Dr. Jachno.

"Weakening" of the war potential of other countries.

The Prosecution asserted that Germany's economic policy in regard to foreign countries primarily aimed at the weakening of the economic power of those countries which were potential enemies of the Third Reich. It particularly accused the defendants in this trial of having closely collaborated with the Nazi government in order to use deliberately international Cartel agreements as military weapon for the purpose of weakening other countries.

The Prosecution was not able to substantiate its assertion by any provisions of international law according to which a country or its industry would be obliged to place its inventions or experience at the disposal of another country or its industry. The I.G. therefore definitely had the right to dispose of its production processes as it pleased. It was only bound by private business agreements which were concluded with foreigners unless internal state regulations of the Third Reich prevented the conclusion or implementation of such agreements.

As far as especially the relations of the I.G. to the industry of the United States were concerned, ter MEER stated convincingly in his testimony on 13 February 1948 that, particularly in this respect, the I.G. had concluded numerous agreements in all fields of chemistry which included the transfer of experimental data. He referred in this respect to

Exhibit ter MEER 174, Document 101, Book VI, p. 1.

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which lists more than 40 agreements of this kind with firms in the USA. As many as 16 such agreements were concluded in 1938 and later.

Testimony ter MEER, English transcript, pp. 7042/43
German transcript, pp. 7089/91

Summarizing, ter MEER stated on page 7091, English transcript, p. 7043:

"This is the broadest co-operation in the field of chemical industry, with a specific country in the world, I have ever heard about, and I don't think that there exists an American concern or an English concern which has a comparable amount of agreements with the foreign concerns in the chemical industry."

In regard to France, ter MEER likewise referred in his testimony on 30 April 1948, to the numerous agreements which had been concluded with French chemical concerns.

Testimony ter MEER, English transcript, pp. 13000/01
German transcript, p. 13295

There were also numerous agreements in existence which had been concluded with English chemical concerns in various fields:

Exh. BUETEFISCHE 55,	Doc. 281,	Book VIII,	p. 52 c
" " 107,	" 105,	" V,	p. 53
" BUERGIN 20,	" 71,	" III,	p. 54
" " 42,	" 67,	" III,	p. 77
" KUEPPE 44,	" 44,	" I,	p. 96
" ter MEER 230,	" 68,	" III,	p. 45

Through these numerous agreements the I.G. permitted the industries of these countries to participate in the results of its research work and furthered international co-operation in the chemical field by granting many licences. However, economic co-operation with foreign undertakings was restricted by legislative measures, which provided severe punishment for so-called economic treason.

Exh. v. KIERIEM 9, Doc. 9, Book II, p. 83.

At that time, I.G. in ^{its} basic statements addressed to the Reich Minister of Justice pointed out the dangers which were brought about for Germany's economy by this legislation.

Exh. v. KNIERIEM 11, Doc. 12, Book II, p. 111 and following
pages.

While on the witness stand on 6 February 1948,

Testimony v. KNIERIEM, English transcript, pp. 6514/22,
German transcript, pp. 6553/72,

Dr. v. KNIERIEM testified in detail as to the attitude adopted by the D.G. in this situation created by the German legislation, and stated that I.G. had done everything in its power to continue and intensify the co-operation with their foreign contractual partners.

Testimony ter MEER, English transcript, pp. 7040/41,
German transcript, pp. 7088/89
Exh. v. KNIERIEM 9, Doc. 9, Book II, p. 78.

The employees of Vermittlungstelle W, who had to obtain the permission of the appropriate authorities for the granting of licences and the transfer of experimental data to foreign firms, confirmed as authorities to grant these permissions.

Testimony GONR, English transcript, pp. 2683 and 2692,
German transcript, pp. 2683 and 2692,

Testimony WAGNER, English transcript, p. 621,
German transcript, p. 591.

The Prosecution now tries to prove from the manner in which I.G. concluded or executed its agreements with partners in USA that I.G. deceived its contractual partners and, together with the Nazi Government, tried to do everything possible to impede research and development in the United States. The Prosecution

believed that, in order to substantiate its charge, it had to refer to the history of the agreements concluded between I.G. and Standard Oil, N.J., as a particularly striking example.

The legal and commercial aspects of these agreements need not be discussed here, because in respect to these questions reference can be made to the explanations in the Closing Brief for the defendant Dr. v. KRIEGER. In the negotiations with Standard Oil, Dr. ter MEER participated in the discussions on synthetic rubber.

USA Buna

- 1) The basis for the negotiations between I.G. and Standard Oil Co. of New Jersey concerning synthetic rubber was the Jasco agreement of 20 September 1930.

Prosecution Exhibit 945, NI-10433, Book 42, English transcript
p. 45.

The affidavit of Dr. LOEW of 7 January 1948,

Exh. ter MEER 176, Doc. 104, Book VI, pp. 20-22,
contains this contract in the form of an extract. The contracting parties agreed that the joint utilization of the buna process on the basis of raw materials of the mineral oil industry fell within the scope of this contract. Their co-operation in this field comprised in the following:

- a) Measures for the carrying out of the German four-step-process in USA. Experiments by Jasco at Baton Rouge and negotiations with the Dupont Co. These experiments were given up in 1936, because their continuance did not prove profitable under American conditions.

Exh. ter MEER	182,	Doc.	111,	Book VI,	p. 59	
"	"	192,	"	120,	" VII, p. 26	
"	"	193,	"	121,	" VII, p. 31	
"	"	194,	"	122,	" VII, p. 35	
"	"	195,	"	123,	" VII, p. 38	
"	"	197,	"	125,	" VII, p. 47	(125)
"	"	198,	"	126,	" VII, p. 55	

- b) Deliveries of Buna N and S to the United States and the carrying out of tests as to its utilisation with the rubber-processing industry in USA in order to arouse its interest for buna (from 1933 onwards).

Exh. ter MEER	187,	Doc.	115,	Book VII,	p. 1	
"	"	188,	"	116,	" VII, p. 2	
"	"	190,	"	118,	" VII, p. 17	
"	"	178,	"	106,	" VI, pp. 35/36	
"	"	203,	"	131,	" VII, pp. 56/57	
"	"	204,	"	132,	" VII, p. 68	
"	"	179,	"	107,	" VI, p. 37	
"	"	218,	"	146,	" VIII, p. 55	

- c) From 1935 onwards, resumption of new experiments at Oppau, (Germany), with the aim of developing an economical process for the production of butadiene, the key product for buna, from raw materials of the petroleum industry, which process, although not usable in Germany, would, however, suit American conditions.

Exh. ter MEER	181,	Doc.	109,	Book VI,	p. 57	
"	"	196,	"	124,	" VII, p. 44	
"	"	183,	"	111,	" VI, p. 62	
"	"	184,	"	112,	" VI, p. 62	
"	"	206,	"	134,	" VII, p. 71	
"	"	207,	"	135,	" VII, p. 72	

- d) Steps jointly taken with Standard Oil for the carrying out of the process ad c) in a large scale plant in USA, and negotiations with the rubber-processing industry in the USA with the aim of winning them for a participation in the large scale plant.

Exh. ter MEER	209,	Doc. 137,	Book VIII,	p. 39
"	" 179,	" 107,	" VI,	pp. 38/39
"	" 180,	" 108,	" VI,	p. 41
"	" 217,	" 145,	" VIII,	p. 53
"	" 219,	" 147,	" VIII,	p. 57
"	" 220,	" 148,	" VIII,	pp. 59/60 and 66/67

2) In its preliminary memorandum of 6 December 1947, Part I, English text pp. 49-52, the Prosecution asserted that the negotiations with the object of ceding buna patents and experience to the USA for industrial utilization began in 1937. This presentation of the Prosecution produces the wrong impression, namely that of the I.G. not having contributed to the buna synthetic processes in the USA at all during the years 1930-37. In fact, the parties to the Jasco Agreement did co-operate at Baton Rouge, which co-operation involved an expense of more than one million dollars for Jasco, which were borne to equal parts by the I.G. and Standard.

Exh. ter MEER 182, Doc. 110, Book VI, p. 60

Furthermore, tire experiments were carried out with General Tire and Rubber Co. Akron.

Exh. ter MEER 188, Doc. 116, Book VII, p. 2

Finally, negotiations were conducted between Standard, Dupont and I.G. in 1935/36 with the object of proceeding jointly in the buna field.

Exh. ter MEER 195, Doc. 123, Book VII, pp. 41/42

However, these measures which aimed at the introduction of the German process for the production of buna from acetylene (four-step-process) in the USA, did not produce any practical results.

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But they prove that, even during the years before 1937, I.G. informed its American partners of the experimental data at its disposal and offered those data to them. It was not I.G.'s fault that the German process for the manufacture of Buna from acetylene had to be dropped in the U.S.A. because there was no hope of practical exploitation. In his book Howard concludes this period up to 1937 with the following words:

"Any report of synthetic rubber developments of this point would necessarily have concluded with the statement that there was as yet nothing in the whole picture of any great importance, either to the United States or to Standard Oil Company."

Exh. for Meer 225, Document 153, Book IX, Page 46 of the Book "Buna Rubber".

- 3) As far as the events after 1937 are concerned the Prosecution describes the situation as if I.G. had deliberately kept its process secret from American firms interested while making them believe that they would receive the processes at a later date. Thus I.G. is alleged to have attempted to prevent independent research in the U.S.A.

In this connection the Prosecution overlooks the fact that a process suitable for American conditions, namely the manufacture of the key-product Butadiene from mineral oil products had not yet been developed by I.G.. I.G. had been working on this process in its Oppau plant since 1935:

Exh. for Meer 183, Document 111, Book VI, Page 62.

In 1938 this process was not ready for production:

Exh. for Meer 207, Document 135, Book VII, bottom of Page 72 and Page 73,

Exh. for Meer 183, Document 111, Book VI, Page 73.

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That was the reason why in the years 1936-1938 no practical steps could be taken in the realization of the synthesis of Buna in the U.S.A. Moreover, since 1936 there existed an express prohibition by the German Government to supply technical information on Buna to foreign countries.

Exh. for Hoer 199, Document 127, Book VII, Page 57,
for Hoer's interrogation, Transcript, English Page 7161,
German Page 7110.

The Prosecution have not asserted that I.G. itself had caused this ban to be imposed. Nor is there any reason for such an assumption. I.G.'s behavior rather proves the opposite. On the one hand for Hoer, in spite of the general ban, succeeded in obtaining permission to strate export samples of Buna to the U.S.A. and to have its experts ~~decon-~~ processing methods. On the other hand I.G. imperturbably continued in Oppau its work for the manufacture of Butadiene from raw materials of the mineral oil industry.

Interrogation for Hoer, Transcript, English Pages 7161/62;
German Pages 7110/12.

The representatives of Standard Oil were familiar with this embargo.

Prosecution Exh.	957, NI-10436, Book 42,	English Page 132, German Page 116;
"	" 959, NI-10453, Book 42,	English Page 135, German Page 124;
"	" 961, NI-10454, Book 42,	English Page 137, German Page 137;
"	" 963, NI-10456, Book 42,	English Page 145; German Page 142;
"	" 964, NI-10457, Book 42,	English Page 148, German Page 145;
"	" 965, NI-10458, Book 42,	English Page 151, German Page 148;
"	" 966, NI-10505, Book 42,	English Page 153, German Page 150;
"	" 968, NI-10460, Book 42,	English Page 158, German Page 155;
"	" 969, NI-10461, Book 42,	English Page 163, German Page 160.

Mr. Howard and Dr. for Hoer continually interchanged their views

about the individual steps that were to be taken. Howard visited Oppau every year, to be informed of the progress made.

Interrogation for Hoer, Transcript, English Page 7064, German Page 7112.

American experts came to Germany in order to inspect the plants and to study the processes used there; the experts of the I.G. gave them information gladly and showed them round the factories.

Exh. v. Knieriem 9, Doc. No. 9, Book II, F. 78/79
Exh. for Meer 163, Doc. for Meer III, Book VII, E. 62

When Mr. Howard visited Germany again in 1938, experiments at Oppau had made such progress that there seemed to be some chance of economic exploitation in the USA. But no practical steps could be taken because the government had prohibited the supply of information on Buna to foreign countries. After detailed negotiations and after an extremely ticklish conference in the Reich Ministry for Economic Affairs, Dr. ter Meer succeeded in having the ban lifted. He was, however, unable to obtain complete freedom of action. He was still obliged to inform the Reich Ministry for Economic Affairs of the initiation and progress of negotiations in the field of Buna with foreign countries. He also had to ask for the permission of the Ministry before concluding an agreement.

Pres. Exh. 967, NI-10 459, Book 42, English F. 156,
German P. 153
Interrogation for Meer, Transcript, English F. 7084/85,
German P. 7132/34

When, the government ban having been lifted, the obstacles had been cleared out of the way, Dr. ter Meer went to America at the end of 1938 to carry further his plans for American Buna Production. He was accompanied by the leading Buna expert of Oppau, Dr. Mueller-Cunradi, who was to investigate on the spot the possibilities of constructing a plant and who was to work together with the Americans on the plans.

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Interrogation ter Meer, Transcript, English P. 7090.
German P. 7139/40

The Prosecution have pointed out that on the occasion of this trip no contract of any kind was concluded with Standard Oil to settle the question as to how Buna was to be treated in accordance with the Jasco agreement. But it is quite wrong to make ter Meer responsible for that. The construction in the USA of a major plant for the production of Buna S called for the investment of a considerable sum, estimated at 20 million dollars.

Exh. ter Meer 203, Doc. 136, Book VIII, English P. 13,
German P. 12a.

Such investment constituted a considerable risk so long as there was no market for Buna S, which was more expensive than natural rubber, in the USA, so that there was no guarantee that the 2000 tons of Buna produced per month would be sold. Whether or not the sales were in fact guaranteed could only be established by means of tire tests. That is why the executive committee of Standard Oil decided in its meeting on 28 November 1938, which ter Meer attended, to take up negotiations with the American tire industry. The question of a contract with I.G. on the other hand was only mentioned in passing, and no final decision was arrived at.

Pros. Exh. 969, NI-10 461, Book 42, English P. 163,
German P. 160
Exh. ter Meer 175, Doc. 103, Book VI, P. 17
Interrogation ter Meer, Transcript, English P. 7094,
German P. 7144.

The Prosecution account, in accordance with which the negotiations were terminated in the spring of 1939, is incorrect. Tire tests were in fact continued until the outbreak of war, and ter Meer

had informed Howard that he was going to come to the States with v. Knieriem, Ambros and Mueller-Gunradi in the autumn of 1939.

Exh. ter Meer 220, Doc. 148, Book VIII, P. 53
" " " 217, " 145, " VIII, P. 53
Interrogation ter Meer, Transcript, English P. 7106/7,
German P. 7159/60

This trip was prevented by the outbreak of war in Europe. Instead it was agreed in the course of a conference at the Hague that the Buna patents be transferred to Jasco and that the Standard Oil acquire all Jasco shares. The patents were transferred in November 1939 and in June 1940 (Cf. section 4).

4) The Prosecution assert that the transfer to Standard Oil of the American Buna patents held by I.G. meant no more than a transfer of specifications. This allegation is false. The patents transferred to the Standard Oil represented complete patent protection for the whole field of Buna, for Buna Production as well as for Buna Processing.

The patents cover particularly

- a) the manufacture of the key product, butadiene
- b) the polymerisation of Buna S, S and N
- c) the thermic decomposition of Buna S
- d) the manufacture of tires from Buna .

As far as patents listed under a) c) and d) are concerned, up to date "know-how" in 1939 was also transferred:

Exh. ter Meer 183, Doc. 111, Book VI, P. 62/63 and 69/72
" " " 225, " 153, " IX, P. 75 of the Book "Buna
" " " 180, " 108, " VI, P. 41-Rubber" by Howard
55.

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The polymerisation patents listed under b) - there are several dozen of them, including specific patents for Buna S and N - described the polymerisation process in such detail, that the expert had no difficulty in imitating them. In proof of that statement we would refer you to

Exh. ter Meer 226, Doc. 154, Book IX, P. 71.

The fact that all the patents were transferred is confirmed by Dr. Loehr, who himself took part in the transfer. In the course of the conference at Basle on 3 May 1940 the definition of the Buna field was drawn wider, and further patents had to be transferred accordingly. Transfer carried out on 12 June 1940.

Exh. ter Meer 176, Doc. 104, Book VI, P. 29.

Howard had acknowledged the receipt of the patents transferred in his cablegram, dated 31 July 1940.

Pros. Exh. 991, NI-10 476, Book 43, English, P. 67,
German P. 65.

5) The following document shows that the I.G. did in fact transfer to Standard Oil valuable "know-how" in the Buna field:

Exh. ter Meer 274, Doc. 158, Book XIV, P. 10/11.

The following passage is quoted from that document:

"Yet, as a matter of fact the outcome proved that we had even more knowledge at the time than we realized, and that our staff had the ability to fill in the gaps in the information more readily than we realized. The efforts of our technical staff showed that sufficient information for the erection of plants and the production of Buna rubber was on hand in this country by 1939. Using the disclosures made in the patents themselves and such further information as was available by October of that year, we had the process ready for plant design by February 1940, at which time we proceeded

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immediately to construct such a plant as I have stated above." (Statement by W.S. Farish, President of Standard Oil Co. (N.J.) before the Special Committee investigating the National Defense Program, United States Senate, April 2, 1942).

R.T. Haslam, Vicepresident of Standard Oil (N.J.) made a similar statement in an article in the "Petroleum Times" dated 25 December 1943, and has since confirmed that statement in his affidavits dated 21 March 1948:

Exh. Krauch 202, Doc. 39, Supplement to Krauch Book IX, P. 12 and 13 of Doc.

6) Ter Meer was asked in cross-examination whether it was true that the transfer of the Buna patents to Standard Oil in 1939 had been a sham transaction. Ter Meer answered that question in the negative.

Interrogation ter Meer, Transcript, English P. 5328, German P. 5354.

It was, as a matter of fact, a genuine and final transfer to Standard Oil of the American Buna patents. The value of these transfers has been shown by the above statements. The idea that such a transaction might improve the position of both parties, should the USA enter into the war at a later date, may have played a certain part. But that is irrelevant to the trial now being conducted. It is, however, certain that the transaction fully enabled the Standard Oil to exploit these most important patents and the processes described therein.

7) From the fact that I.G. refused to grant to the firms Goodyear and Goodrich licences for the Buna patents in the USA, the Prosecution

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would draw the conclusion that I.G. by so doing intended to prevent the realisation of the synthesis of Buna in the USA. The Prosecution are mistaken once again. Ever since the conclusion of the Jasco agreement, the I.G. and Standard had undertaken to carry out together the development of Buna from the raw materials of the mineral oil industry in the USA. The issue of licences for Buna patents to third parties was therefore subject to the approval of both parties. As early as 1935 the firm R.T. Vanderbilt had approached Standard and implored them to leave to them the development of synthetic rubber in the USA. By agreement between ter Meer and Mr. Howard, that request had been turned down.

Fros. Exh. 953, NI-10 469, Book 42, English P. 111,
German P. 96.

In the same way I.G. rejected requests for licences made by Goodyear and Goodrich. Ter Meer has gone into the reasons for this in his interrogation on 13 February 1948.

Interrogation ter Meer, Transcript, English P. 7064/66,
German P. 7112/14.

The letter Mr. Howard wrote to Mr. Dedford, one of the Vice Presidents of Standard, on 14 April 1938, shows that Standard approved of I.G.'s attitude.

Fros. Exh. 964, NI-10 457, Book 42, English P. 147/48,
German P. 144/45.

8) The Prosecution theory that I.G. deliberately failed to fulfil the obligations arising from the Jasco agreement, is based further on a file memorandum by ter Meer on a conference in the Reich Ministry for Economic

affairs on 18 March 1936.

Fros. Exh. 960, NI-10 455, Book 42, English P. 136,
German P. 125.

The following is an excerpt from the document:

Conferences which up to now had the sole object of easing the minds of American interested parties and possibly to prevent an initiative on their own part within the frame of butadiene rubber were held with Standard, Goodrich, and Goodyear. We are under the impression that one cannot stem things in the USA for much longer without taking the risk of being faced all of a sudden by an unpleasant situation and last we be unable to reap the full value of our work and our fights.....The American Patent law does not make licensing mandatory. It would nevertheless be conceivable that because of the extraordinarily great importance of the rubber problem for the USA and because tendencies for restoring military power are very strong there too, considering the decrease in unemployment, etc. a bill for a corresponding law might be submitted to Washington. We, therefore, treat the license requests of the American firms in a dilatory way so as not to push them into taking unpleasant measures. In all other respects this is somewhat counter-balanced by our relations with Standard Oil and our acquiescence, in principle, to line up with Standard Oil in the first place, as the supplier of raw materials, in the event of an exploitation of our rubber patents in the USA.....".

The Prosecution have quoted these excerpts, which occur in two entirely different places in the file memorandum, and are separated by a whole page of text, as though they belonged together.

Prosecution Trial Brief Part I, P. 50 .

Apart from that they left out the last sentence of the above quotation. In his direct and cross-examinations

Interrogation ter Meer, Transcript, English I. 7085/87,
German P. 7133/37 I. 7290/92
P. 7351/53

ter Meer has stated clearly that his remark in the first sentence of the quotation referring to the firms Standard, Goodrich and Goodyear is incorrect. Between I.G. and Standard Oil there existed the Jasco agreement which provided that they should collaborate in the field of Buna in the USA. I.G. had no contracts with Goodrich and Goodyear.

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Their applications for licences had been rejected. It is only natural and quite usual that one should, when rejecting such applications, reassure the applicants, and should attempt to prevent them from taking the initiative. It is inaccurate and incorrect, that Standard Oil should also be mentioned in this sentence. Standard Oil was not "reassured and prevented from taking the initiative", although prior to 1938 nothing concrete could be done in the absence of a butadiene process based on raw materials of the mineral oil industry suitable for the U.S.. Ter Meer, of course, know all that. We are therefore dealing with an inaccuracy contained in a hurried inter-office file note, which obviously does not make sense.

The "dilatatory treatment" mentioned in the second part of the quotation does not refer to Standard Oil, but only to Goodrich and Goodyear. That follows clearly from the last sentence of the quotation, which the Prosecution have omitted.

Apart from that the following must be borne in mind:

It was Ter Meer's aim to obtain the cancellation of the ban which had been put in 1936 on the supply of know-how in the field of Buna, and to restore fully collaboration with Standard Oil on the basis of the Jasco agreement which although it had not been interrupted, was severely handicapped. Thus there arose for Ter Meer the tactical necessity of stressing in the negotiations with General Loeb

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the senselessness and stupidity of allowing a ban to continue which had been imposed in 1936. That tactical situation is the only explanation for ter Meer's attempts, at that time, to put matters in such a way as to give the impression that serious economic consequences would result unless the ban were lifted. It was impossible to persuade a man like General Loeb with other arguments. In view of the fact that the Nazis took up a hostile attitude to international collaboration, any reference to the Jasko agreement which had been concluded in 1936 and to the obligations which resulted therefrom for I.G. might have had a deleterious effect on General Loeb and ter Meer's aim, to have the ban lifted, might have been imperilled. But it was the sole purpose of that tedious conference in the Reich Ministry for Economic Affairs to gain freedom of action in negotiations with the USA. Ter Meer reached that aim. Government permission was granted in October 1936.

Pres. Exh. NI-10 459, Book 42, English P. 156, German P. 153

9) The remark the defendant ter Meer made in his letter to Krauch, dated 15 January 1942,

Pres. Exh. 960, NI-10 455, Book 42, English P. 139, German P. 128, to which the Prosecution refers, does not conclusively prove the truth of the Prosecution's theory either. The letter was occasioned by an enquiry from the Reich Office for Economic Development regarding steps taken by I.G. in USA in connexion with Buna.

Pres. Exh. 960, NI-10 455, Book 42, English P. 136, German P. 125.

The enquiry was made shortly after Pearl Harbour and after the USA had entered the war.

Ter Meer at that time feared that the admission of having given to the Standard Oil the Buna know-how might lead to an investigation before the People's Court (Volksgerichtshof) on the grounds of economic treason. He therefore gave in his letter to Krauch a presentation which was objectively incorrect and which can only be understood by the difficult situation in which he then found himself.

Testimony ter Meer, Transcr. Engl. p. 7106-07, German p. 7158-59.

In fact, ter Meer supplied all essential experiences concerning the production of Buna in loyal fulfilment of the obligations under the Jasco agreement, despite the fact that this was not done without his having to overcome strong opposition and, as the incidents dealt with show, not without considerable risk.

10) The whole behaviour of the I.G. contradicts the assertion by the Prosecution that the I.G. broke its contract, while Standard Oil correctly fulfilled their obligations under the Jasco agreement. The Prosecution overlooks the fact that the information imparted by Standard Oil concerning Butyl Rubber did not concern a perfected process, but only the results of preliminary experiments. This point was fully explained by ter Meer at his hearing on 16 February 1948.

Testimony ter Meer, Engl. Transcr. pp. 7087/89, German pp. 7137/39.

The I.G. only undertook experiments for the improvement of Butyl Rubber on the basis of the information supplied by Standard Oil. They never, however, proceeded to the actual manufacture,

as the basic material (Isobutylene) was not obtainable cheaply enough in Germany.

11) The negotiations on Buna with Standard Oil, Dupont Co. and the American rubber manufacturing industry are described in a report which ter Meer prepared on 25 November 1945 for Mr. Louis Lusk, Chief of Decartellization and Planning Branch, Frankfurt/Main. Dr. ter Meer identified this report in his affidavit of 21 January 1948.

Exh. ter Meer, 175, Doc. 103, Book VI, p.9.

This presentation, given without record material, while under arrest and long before the serving of the indictment, corresponds in all essential points with the result of the evidence. It further fully accords with the description given by Mr. Howard in his book, "Buna Rubber", published in New York in 1947, and produced before the Court, excerpts from which are contained in

Exh. ter Meer 224; Doc. 152; Book IX, p.1
" " " 225, " 153, " IX, p.3.

Howard and ter Meer wrote their reports entirely independently of each other. That their presentations nevertheless fully correspond with each other is the best proof that they contain the historic truth.

Mr. Howard in his affidavit of 9 April 1948 summarised his estimation of the behaviour of the defendant as follows: -

"Specifically, affiant declares that, to the best of his knowledge and belief, Dr. ter Meer sought on behalf of I.G. to fulfil all legal obligations under the Jasco agreement up to the outbreak of the war and that he was always fair and reasonable in his interpretation of the obligation of the parties under said agreement".

Exh.ter Meer 278, Doc.159, Supplement 2 to Book XIV.

12) How far from the truth, moreover, is the idea that the I.G., by its behaviour in the field of the Buna processes, sought to impede the development of the latter in the U.S.A. and thereby to weaken the American war potential, is finally further illustrated by the following consideration:

Ter Meer and the other defendants of course knew the raw material and foreign currency position of the U.S.A.. They knew that the wealth of the U.S.A. would always enable it to buy all its requirements in natural rubber. Nobody at that time could ever have imagined that the U.S.A. would arrive in a critical situation with its rubber supply during a war, through the Japanese occupation of the Dutch East Indies. Even after the outbreak of the war in Europe, this would still generally have been considered impossible, as is evident from the affidavit of Mr. Haslam, Vice President of the Standard Oil (N.J.), which states on page 12:

"At that time (1939), few people in Government or out dreamed that, even if war ever came with Japan, the Japs would be able to take Singapore and the Dutch East Indies."

Exhibit Krauch 202 Doc. 39, Supplement to Book Krauch IX, p.12.

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It stands to reason that the defendants also, and in particular Dr. ter Meer, could not foresee the later course of events. That would have been impossible. It is therefore inconceivable how they could in any case have arrived at the idea of damaging the war potential of the U.S.A. through neglecting or delaying the development of the Buna industry there. Therefore in this point also, the defendants are not guilty.

F. Plundering and Enslavement/ within the meaning of /Count I of the
Indictment.

The Prosecution charges the I.G. with having taken part in the preparation and waging of aggressive war by acts of plunder and enslavement.

Prosecution Trial Brief, Part I under IV H p.72.

So far as the charge of enslavement is concerned, and the aspects deduced from it by the Prosecution, reference is made to the statements of Drs. Boettcher, H. Dix and Seidl within the framework of the general defense. With regard to the accusation of plundering, reference is made to the fundamental statements of Dr. Siemers. These will be further amplified in the following, in so far as this appears to be specially called for in the case of the defendant Dr. ter Meer.

The I.G. is accused of acquiring chemical factories in occupied countries. By this acquisition the defendants are supposed to have added the undertakings concerned and their resources to the German war economy, with the object of carrying out the aggressive war and of preparing new aggressive wars.

In this connection, the so-called "New Order" is adduced as proof of the intentions of the I.G. The witness Schlottorer testified regarding this "New Order" on 27 January 1948. He has shown that the plan worked out by the I.G. was demanded by the Reich Economic Ministry, that corresponding proposals were also required from other German firms, banks etc. and that these undertakings also

complied with the orders of the Ministry .

Testimony Schlotterer, Transcript, English pp. 5850/51
German pp. 5894/95
English pp. 5857/59
German pp. 5902/3.

The New Order was therefore not a discovery nor a special policy of the I.G. Dr. ter Meer gave an affidavit on the subject of the New Order on 29 April 1947.

Exh. ter Meer, Doc. 71, Book III, p.57.

He emphasized therein that, to the best of his knowledge, the New Order was not accepted as a fundamental policy by the I.G. It was a question of fulfilling a "work ordered" by the Reich Economic Ministry.

The firms and ^{financial interests} /acquired by the I.G. in occupied countries after the outbreak of war were in every case preceded by a quite definite business condition, i.e. it had a private economy basis.

With reference to Poland, proof is given in the chapter concerned in this Closing Brief, in dealing with Count II of the Indictment , that the two factories, Winnica and Boruta, never ^{goods to meet} produced /Wehrmacht requirements, neither under the administration of the State Commissioner or Trustee, nor after the final acquisition by the I.G. They were purely dyestuffs factories, which at the same time produced intermediate products for dyes and other peacetime requirements. By far the greatest part of the production remained in Poland. An explosives plant in the Boruta Works was immediately closed down and never again put into operation. The employees, consisting of two-thirds Poles, were retained in employment.

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They were cared for in the same way as were the German workers.

As far as Russia is concerned, no Russian synthetic rubber factories were ever occupied, purchased, or operated. Negotiations conducted with the Reich Ministry of Economics for this purpose proved fruitless.

With respect to the Francolor, the appropriate chapter of this Closing Brief referring to Count II proves that the plants connected with the Francolor continued throughout the war to operate primarily as dyestuffs-factories. The dyestuffs which they produced were consumed almost wholly in France or exported to Spain, Portugal, and Belgium. The agreements/concluded between the I.G. and the parent factories - the so-called Convention - contain nothing which could furnish any support whatsoever for the charges made by the Prosecution. The agreement dealt with collaboration in the fields of dyestuffs and similar materials.

When in 1942 it became necessary to commence a kind of "façade" production of products for the direct or indirect use of the Wehrmacht, a policy which was pursued with the consent of the French management, this step proved responsible for the continued operation of the plants and thus for the further employment of their purely French staff. The factors which led to the production of these goods, which, incidentally was conducted on a very small scale, were explained in detail by the evidence. In order to prevent repetition, it is pointed out that they are described in connection with Count II. (Compare I. 181/82 of the following). Here it should suffice to state that the maintenance of the plants and their continued operation, was wholly in the interests of the

French economy and that this aim was achieved by the I.G. with friendly collaboration from the French management.

The same considerations apply to the Muehlhausen-Nord plant, in Alsace-Lorraine which had been acquired by the I.G. This plant produced only dyestuffs, intermediates and synthetic musk. In this case also, it was made possible, by agreement with the previous owners, for the workers to retain their employment.

The I.G. treated the plants which it acquired in the occupied countries, or in which it held financial interests, as in the case of Francolor, in accordance with the provisions of International Law, in particular Article 43 and Section 6 of the introduction to the Hague Regulations for Land Warfare. It re-established and improved them from the technical point-of view for the peace-time requirements of the civilian population and saw to it, in so far as this was at all possible in the prevailing circumstances, that the plants resumed and pursued the manufacture of goods destined for the general market as under private management. The documents

Exh. ter Meer	245,	Doc.	70,	Book	III,	P.	52
"	"	"	247,	"	72;	"	III, " 54
"	"	"	275;	"	96;	"	XIV, " 12
"	"	"	249,	"	76,	"	III, " 71

submitted to the Court prove that this was the especial wish of Dr. ter Meer and that he carried out this intention successfully.

This attitude of Dr. ter Meer's, which was ruled by the concept of free enterprise and which was directed in every case towards the maintenance and improvement of existing assets, is revealed especially clearly in his conduct in Italy.

Ter Meer in Italy.

Ter Meer went to Italy on 15 September 1943. He went there with a certain feeling of relief. In Germany he had to face too many internal conflicts, in particular on account of the continuous interference in industry on the part of the offices of the State and the Party. He was more free in Italy than in Germany. There it was easier for him to act as he wanted to. And he did in fact do so. In spite of difficulties, Ter Meer obtained fertilizer for the Italian farmers, in order to ensure the supply of food for the Italian population.

Exh. Ter Meer 234, Doc. 36, Book I, F. 104
 " " " 235, " 37, " I, " 109
 " " " 239, " 18, " I, " 58

He helped to start up production in closed down factories. If plants were scheduled to close down again, he frequently prevented this. If machinery or other important equipment was supposed to be removed in order to close down plants, he agreed that only unimportant parts be removed and that they remain in Italy. They could then be recovered after the war and thus it would be possible to put the factories into operation again.

When at a later date, German administrative and military authorities were considering plans for the complete destruction of the entire Italian industry, he opposed their plans just as he opposed arbitrary destruction by German demolition squads.

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Exh. ter Meer	236;	Doc. 39;	Book I, P. 117
" " "	239;	" 18;	" I, " 58
" " "	241;	" 35;	" I, " 95
" " "	242;	" 38;	" I, " 113
" " "	241;	" 35;	" I, " 95.

Ter Meer also prevented the destruction of the large Electric power plants and in this way saved Italian industry.

Exh. ter Meer	239;	Doc. 18;	Book I, P. 58
" " "	241;	" 35;	" I, " 95.

Ter Meer prevented the deportation of Italian workers to Germany, by declaring the plants to be protected-plants or by giving timely warnings to the workers, in order that they could flee to the mountains.

Exh. ter Meer	235;	Doc. 37;	Book I, P. 109
" " "	236;	" 39;	" I, " 117.

The S.D. (Security Police) in Milan called ter Meer "a civilian weakling". He was watched by them.

Ter Meer saw to it that Italian industrialists who had been arrested by the S.D. were liberated.

Exh. ter Meer 234, Doc. 36, Book I, P. 104.

Ter Meer went to Italy on 15 September 1943. By doing this, he practically withdrew from the Vorstand of the I.G. In the beginning his connection with it was very loose and later on, on account of the prevailing conditions and the gradual deterioration in communications, it broke off completely.

After 15 September 1943 ter Meer was no longer informed of what went on in the I.G. Thus he cannot be made responsible for anything which happened inside the I.G. after the 15 September 1943.

Naturally, the I.G. contacted him whenever individual matters which were in any way related to ter Meer's activities in Italy were in question.

Trial Brief ter Meer

During the cross-examination of ter Meer, the Prosecution submitted his letter, dated 7 March 1944 to Dr. Struss - Office of the Technical Committee, Frankfurt/Main.

Prosecution Exh. 1877, NI-14 169.

This letter reveals in the first place, that ter Meer no longer concerned himself with the affairs of the Tea. It shows above all, that ter Meer proposed to clear up the affair^{in/}Italy, purely in compliance with a request from AMEROS and then to inform him about it. All that ter Meer did, was to report on this subject; he did not, however, define his own attitude to the matter. The fact that, he had nothing to do with manpower problems in his position in Italy either or with the deportation of workers to Germany must be given particular emphasis.

His own conduct, in connection with the deportation of workers, has been shown above and is substantiated by affidavits.

Trial Brief for Hoer

Ad Count II of the Indictment

Under Count II, the defendants are accused of having committed war crimes and crimes against humanity by robbery and spoliation in countries occupied by Germany. The fundamental, factual and juristic statements of the Defense relative to this Count will be made by Dr. Siemers. Reference is made to his statements.

The Prosecution has connected the defendant Dr. Hoer, for whom I act as Defense Counsel, with the events in Poland, Russia, and France, on which its charges are based. In the following I shall, therefore, deal only with these events.

A. Alleged Spoliations in Poland.

If I dwell in the following at greater length on this subsection of the Prosecution's case than might be necessary for my client Dr. Dr. Hoer, it is not because I am afraid that the defendant Dr. Dr. Hoer might be accused of any special responsibility in the items I have dealt with. This should be specially stressed. I will rather take this trouble for the same reason which caused Dr. Dr. Hoer to deal thoroughly with this point in the witness box, ^{namely,} because none of the defendants was asked in the witness box about the Polish case as a whole, and Herr von Schnitzler did not go into the witness box himself.

Trial Brief for Moor

There was therefore no other choice, in order to clarify the facts for the Tribunal, but for Dr. ter Haar, in spite of his only slight touch with these facts, to give the necessary explanations on his part in the witness box. Furthermore, I am compelled to make a detailed statement on this case, because of the method of the Prosecution, practised particularly strikingly in the case of Poland, viz. not to underline any special responsibility on the part of individual defendants, but to entrench themselves behind the comprehensive, but at the same time meaningless expression, "I.G. Farben". I shall, therefore, endeavor first to explain the Polish case in nearly all its details, on the basis of the results furnished by the evidence and finally to examine the question of Dr. ter Haar's personal responsibility.

The evidence adduced showed the following:

I.G., on the basis of a purchase contract of 27 November 1941, certified by a notary,

Prosecution Exh. 1150, NI-6831, Book 56, English Page 4;
German Page 4,

acquired by purchase the former Polish Dyestuffs Factory of Boruta in Zgierz from the Plenipotentiary of the Four Year Plan -- Main Trusteeship Office for the East -- in Berlin, thus from a State agency, paid the purchase price and operated the factory until the entry of the Russian armed forces in 1945. Further, the Winnica A.G. Dyestuffs Factory at Winnica, near Warsaw, after withdrawal of the sequestration imposed by the German authorities in the Government General,

Trial Brief for Meer

Prosecution Exh. 1165, NI-8389, Book 56, English Page 37;
German Page 73,

was taken over by I.G., as new owner of the company's stock-capital.

Prosecution Exh. 1164, NI-6491, Book 56, English Page 35;
German Page 70.

It was operated by I.G. for a while and had finally also to be left
the advancing Russian troops. Further, it has been established that,
in the beginning of 1941, at a date which can no longer be precisely
ascertained, I.G. bought from the Government Trusteeship Agency in
Cracow an Anthraquinone apparatus, from the property of the Winnica
which at that time was still confiscated
Factory, and being provisionally administrated by the Cracow Trustee-
ship Office. About the same time, I.G. ^{also} acquired by purchase from
the same office a beta-oxy-naphtole acid apparatus, which had belonged
to the Wola Dyestuffs Factory, that was also being administrated in
trusteeship by the State. The latter apparatus was in 1944 transferred
by I.G. to an I.G. plant in Offenbach-on-Main, but was however after
war returned to the Polish State, which had it transported after all not
to Wola but to Boruta.

Testimony Schwab, Prosecution, English Page 6098, German
Page 6153.

The evidence adduced has however in no way corroborated the
allegations of the Prosecution, viz. that I.G.

- a) participated in the confiscation of the three Polish Boruta;
Wola, and Winnica dyestuffs factories in a criminal fashion;
- b) had itself taken over, or intervened in, or been responsible
for the provisional administration of, the three confiscated
dyestuffs factories;
- c) in a criminal fashion had aimed at the expropriation of the
Polish factories and plants with the object of later appropriation.

Closing Brief ter Meer.

CERTIFICATE OF TRANSLATION

21 June 1948

We,

Leonard J. LAWRENCE,
Alfred RAHL,
Brigitte TURK,
Beryl C. BESWICK,
Eugene R. KUN,
Julius J. STEUER,
Anne MARTIN,

ETO # 20138,
B 398081,
ETO # 35130,
ETO # 20183,
D - 429798,
AGO - A - 442654,
ETO # 20144,

hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of Closing Brief ter Meer.

.....
Leonard J. LAWRENCE
ETO # 20138,
pages I-II, 64-76,
95 - 105

.....
Alfred RAHL
B 398081
pages 1 - 5, 46-55,
81-88

.....
Brigitte TURK
ETO # 35130,
pages 6-12, 39-45,
77-80

.....
Beryl C. BESWICK
ETO # 20183,
pages 13 - 18,
31 - 38

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Eugene R. KUN
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pages 19 - 24,
56-63, 112-116

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AGO-A-442654
pages 25-30,
83-84

.....
Anne MARTIN
ETO # 20144
pages 106-111,
117-119.

- d) intentionally to have supported the policy of spoliation and Germanization in Poland,
- e) to have gained an unjustified advantage with regard to property by its measures in Poland.

Before this will be proved in detail with the aid of the evidence submitted to the Court, it is necessary to pay attention to the most important incidents involving foreign matters which occurred in Poland besides the matters which are of interest here, because only in such a manner it will be possible to understand correctly the measures taken by the I.G.

The war against Poland started on 1 September 1939 and, as far as strategic matters were concerned, it was finished after about 18 days. The Polish Army had unconditionally surrendered, the Polish government had fled to foreign countries. From the day the war broke out until about the middle of October 1939, the territory of the Polish state, as far as it had not been occupied by the Russians in the meantime, was administrated by a German Military Office, the "Chief of the Civil Administration". After that Poland was split up in accordance with the Reich Law of 12 October 1939 and was completely administrated by the German Civil Administration (from this day on the German Wehrmacht had no longer any administrative authority). As from 12 October 1939 the Western provinces of Poland were directly annexed to the Reich as new Reichsgaue Wartheland and Danzig-West-prussen (Western-Prussia) the remaining Eastern part of Poland with Warsaw as center was indirectly subordinated to the Reich as so-called Government-General. Shortly after this new order, and it is irrelevant in this connection whether and how it should be criticized, the highest administrative authorities of the two territories issued

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legal regulations in connection with the confiscation of Polish state and private property which the prosecution has submitted as

Pros. Exh.	1125,	NI-4602,	Book	55,	e.P.1,	G.	P.1
"	"	1126,	NI-4603,	"	55,	" " 3,	" " 2
"	"	1127,	NI-4600,	"	55,	" " 7,	" " 10
"	"	1128,	NI-4601,	"	55,	" " 13,	" " 15

and which the witness Dr. Winkler has explained in detail in his affidavit

Exh. v. Schnitzler 127, Doc. 124, Book VII, P.99.

Now, included in this outer frame, the following can be said on the basis of the adduction of evidence to the accusations submitted by the prosecution:

- a) The confiscation of the Polish dye-stuff factories Boruta, Wola and Winnica.

The prosecution endeavors to accuse the I.G. of having had an active part in the confiscation of these dye-stuff factories which was carried out by governmental authorities. The quotations in connection with this matter contained in their Trial Brief have the following wording:

"Farben coveted the Polish chemical plants before they had fallen into German hands."

"From the outset, Farben felt that, as a matter of course, the entire Polish industry was to be subjugated to German in her aggressive wars."

".....that the Nazi Government, in violation of the laws and customs of war, confiscated virtually the entire property of both the Polish state and its citizens, but also that, in many cases here involved, Farben actively participated and even incited the Government to action. I.G. had a very important part in the confiscation."

The prosecution was not able to submit even the slightest proof for one of these assertions.

In these general statements the prosecution submits a completely wrong interpretation, because

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at one time it talks about the entire Polish industry and at another time it talks about the Polish chemical industry. As a matter of fact, the evidence submitted covers only 3 Polish dye-stuff factories, these being Boruta, Wola and Winnica. These factories, however, constituted only a very small part of the chemical industry of Poland and thus naturally only a still smaller part of the entire industry of this country. As stated by the witness Schwab

Interrogation Schwab, Transc. E.P.6056, G.P.6113, the Polish dye-stuff industry consisted of only 4% of the entire Polish chemical industry and of these 4% only about 5/8, thus only a little more than the half, consisted of the dye-stuff factories Boruta, Wola and Winnica.

Fros. Exh. 1139, NI-2749, Book 55, E.p.56, G.p.87. This fact is significant for the statistic statements submitted by the prosecution.

In its actual submitting of evidence the prosecution in the Poland case starts with the Vowi pamphlet of 28 July 1936 which in the excerpts submitted

Fros. Exh. 1135, NI-9151, Book 55, E.p. 50, G.p.82
" " 1136, NI-9154, " 55, " " 52, " " 83
" " 1137, NI-9155, " 55, " " 53, " " 84

contains also facts about the dye-stuff factories Boruta, Wola and Winnica. Apparently this pamphlet was to convince the court that the I.G. was prepared for the expected demand just like a "general staff". Nothing would be more incorrect than this conclusion. In reality this publication of the department of political economy of the I.G. was nothing but a compilation of material of economic, scientific contents with which all bigger enterprises, whose interests in the economic field cover territories abroad too are and have to be equipped.

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Perhaps the fact that Poland at that time concentrated on herself the interest of the world has been one of the reasons for this journalistic work; at least this is assumed by Dr. ter Meer in the witness stand.

Interrogation ter Meer, transc. E.P. 13143, G.I. 13431, perhaps it was only the "work of diligence"

Interrogation Schwab, transc. E.P. 6061, G.I. 6118, of an ambitious official in the department political economy of the I.G. In any case this pamphlet did not play any part within the I.G., the majority of the I.G. officials questioned on this subject do not remember at all to have ever read it.

Interrogation ter Meer, transc. E.P. 13143, G.I. 13431. Thus the connection of this pamphlet with any war plans or spoliation intentions of the I.G., as asserted by the prosecution, is completely incorrect

Interrogation Schwab, transc. E.P. 6061, G.I. 6118 and has definitely not been proven.

Prior to the outbreak of the war, which came to the I.G. just as for the majority of the Germans as a complete surprise

Interrogation ter Meer, transc. E.P. 13142, G.I. 13431, the I.G. had not spent any thoughts on the Polish dye-stuff industry. Only after the German troops had thrown back the Polish Army and had advanced in Poland at a speed which hitherto had been unknown

the I.G. decided to take steps at the Reich Offices which appeared to be competent for these matters, in order to prevent on one side a squandering and looting of the Polish dye-stuff factories which had been seized by the events of the war and on the other side to prevent that speculators and gamblers would get access to the Polish dye-stuff industry, and, last not least, in order to guarantee the supply of the Polish consumer market and the employment of the workers.

The question may be raised what right and what intention the I.G. had in doing so. One will not be able to deprive the I.G., as the greatest industrial enterprise in the dye-stuff branch, just like every big enterprise in general, of the basic right to keep a general outlook on the interests of private economy in other countries, be it for the reason that these countries are under consideration for an expansion of the sales market, or because they are of importance for maintaining a certain order in connection with markets in general. At all times and in all countries, merchants adhered to this principle without getting the idea that they did something wrong. If during such observations it is seen that in a country which is subjected to the influence of one's own government, conditions arise which endanger these commercial interests, nothing would be more natural than that the enterprise concerned approach its government in order to demand that this danger be checked. It will not only do it if its own economic interests are endangered -

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- this was the case as far as the I.G. and the dye-stuff factory Winnica was concerned - but also if it appears as if these enterprises would be unable to operate in futuro - and this danger existed in the case of Boruta. The defendant ter Meer expressed this opinion in the witness stand by stating the following:

be
"I always consider it to ~~be~~ proper if measures are taken which are to maintain order and preserve existing values."

Interrogation ter Meer, Transc. E.p. 13145, G.p. 13434.

In this case the I.G., at the beginning, did not have the possibility to take on its own initiative steps to carry out these intentions in Poland, which, as a war zone, was not accessible to the I.G.. When the I.G. took up negotiations with the Reich Ministry of Economy, the war operations were still in full swing. They had to approach, therefore, the Reich Government Offices competent for economic questions and had to point out these problems to these offices. The suggestions made by the officials of the I. G. conducting these negotiations should be, on account of the surprising occurrence of events, regarded as improvisations only, which, as shown later on, did not completely correspond to the intentions of the Ministry of Economy,

Iros. Exh. 2003, NI-2969, submitted later on and had finally other results. The fact that, in part, these negotiations were started before the German troops had occupied the area in which these dye-stuff factories were located has a very harmless explanation, if one takes into consideration that on account of the speed of the advance an outsider could not judge as to when the occupation would actually take place

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On the other hand, however, the purpose pursued by the I.G. not to make the dye-stuff factories concerned accessible to interferences which could not be controlled, could only be achieved if the safeguarding took place immediately.

The Reich Ministry of Economy finally agreed to this consideration, and on 21 September 1939, in spite of hesitations at the beginning, it took over the plants pointed out by the I.G. in trusteeship administration.

Pres. Exh. 1140, NI-1093, Book 55, E.p. 60, G.p.94, and appointed the experts proposed to it by the I.G., Schwab and Dr. Schoener to official trustees. The letter of 21 September 1939 which the Reich Ministry of Economy sent to the I.G. on this occasion shows by the way that the Reich Ministry of Economy, when taking this measure, considered the proposition of the I.G. only as a "recommendation".

Pres. Exh. 1140, NI-1093, Book 55, E.p. 60, G.p.94 and that accordingly it remained completely free and independent in its decision.

The same document in its third para. shows the great difference between this trusteeship administration and a confiscation; in this para. the following is stated:

"The gentlemen who are commissioned with the provisional management will have to manage the enterprises exclusively as a trusteeship for the account of the present owners."

(Underlined by the Defense)

This proves that at that time there could be no mention of a confiscation, but that it was a purely safeguarding measure of the German government in order to protect in the interest of the actual owners the factories from damages which could not be controlled, and on the other hand, to keep the factories in operation as far as this was demanded by the general interests.

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The adduction of evidence has shown that there were justified reasons for such considerations. Thus, as far as the dye-stuff factory Wola is concerned, it has been ascertained that its owner had deserted the factory, that he had withdrawn to his private property in Warsaw and that besides he had taken along all cash,

Interrogation Schwab, Trans. E.p. 6074/6078, G.p. 6131/613 that the factory did no longer produce, that considerable damages had been inflicted, that unknown persons had already plundered the office and that the vehicle park had been removed by Polish military forces.

Interrogation Schwab, Trans. E.p. 6091, G.p. 6148. If official trustees would not have been appointed it would have been, without doubt, only a question of days and the factory would have been completely plundered. Similar conditions prevailed at the Beruta.

Interrogation Schwab, Trans. E.p. 6064/66, G.p. 6122/23.

Here, too, the management had deserted the plant and there was such a lack of cash that the official trustees had to take glean from firms at Ledz in order to be able to start production. If the expert official trustees would not have taken over, it would have been impossible to start production at the Beruta, and not only that, but also the hundreds of Polish workers and employees would have been left to an uncertain fate.

TRIAL BRIEF T.R. MEER

The American Military Tribunal No. IV in its sentence against Flick et al, of 22 December 1947 under Count III expressed correctly that such measures carried out in direct connection with actual operations of war - measures like the provisional taking over by the State of the management of the 3 Polish dye-stuff factories during the war against Poland - are not yet spoliation in accordance with Control Council Law No. 10 or a violation of the Hague Regulation for Land Warfare. In this case, which is similar to our case the defendant Flick was not sentenced for spoliation and plunder because he accepted the trusteeship for a confiscated factory, but because by keeping up the trusteeship permanently he deprived the legal owners permanently of their property. Not the confiscation as such, or the participation of the defendant by accepting the trusteeship was considered as punishable, but the success, the permanent deprivation of the property which was achieved and caused by the defendant Flick by keeping up the confiscation resp. the trusteeship. By the way, in Flick's case it was a real confiscation, while in the case of the 3 Polish dye-stuff factories it is not possible to talk of a confiscation, as the factories were managed by explicit order of the Reich Ministry of Economy

Tros. Exh. 1140, NI-1093, Book 55, E.p. 60, C.p. 94
on account of the owners.

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This was to be a protecting of the total object for the owners, and when compared to confiscation it was a far more lenient way of depriving the owners of the rights to dispose of their property.

For the rest it does not need to be discussed here whether the decisive decree of the Reich Ministry of Economy of 21 September 1939

Pres. Exh. 1140, NI-1093, Book 55, E.p.60, G.p. 94 corresponded to the original intentions of the I.G., because it is of no importance to establish what the I.G. wanted to achieve, but which results its action actually had. In connection with a similar case, the American Military Tribunal No.VI writes under Count II in the Flick sentence:

"We regard as immaterial Flick's purpose ultimately to acquire title. To covet is a sin under the Decalogue but not a violation of the Hague Regulations nor a war crime."

Now, if it would be stated that according to an already existing decision of an American Military Tribunal in Nuernberg a confiscation in connection with actual operations of war is as such not yet a plunder in the sense of the regulations applicable thereto, but only the keeping up of the deprivation of property caused by the confiscation, then it would be possible to reply that the 3 Polish dye-stuff factories were not only put under provisional administration, but were kept in this state of provisional administration for a long period. The trusteeship administration was in all 3 cases kept up for a considerable period, for instance in the case of Wola even until the occupation by Russian troops. We admit this.

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And in spite of that an incident interferes here - which, from a legal point of view - interrupts the series of results originally caused by the action taken by the I.G. to such an extent, that everything which resulted from the deprivation of property starting now can no longer be blamed on the I.G.: It is the confiscation of Polish property for political reasons which started after the termination of hostilities in Poland and the subsequent splitting up of Poland. This general confiscation which also included the three dye-stuff factories concerned is neither a continuation nor a consequence of the provisional subordination under the Reich Ministry of Economy, but a completely new and independent legal matter. It was to have started with the becoming effective of the laws and decrees submitted by the prosecution:

Iros. Exh.	1125, -NI-4602,	Book 55, E.p.1, G.p.1
"	" 1126, NI-4603,	" 55, E.p.3, G.p.2
"	" 1127, NI-4600,	" 55, E.p.7, G.p.10
"	" 1128, NI-4601,	" 55, E.p.13, G.p.15

it was actually carried out, however, simultaneously with the transfer of the administration from the military to the civilian authorities, that is to say as from 12 October 1939. The organization carrying out this task was the official Main Trustee Office East, its superior Reich authority the Plenipotentiary for the Four Year Plan, cf. affidavit Dr. Winkler,

Exh. v. Schnitzler 127, Doc. 124, Book VII, .99.

It is correct that the confiscation of Polish properties did, outwardly, not bring any changes as far as the three dye-stuff factories, which were already under a provisional administration, were concerned. It did change, however, the legal basis of this fact and that without the I.G. playing any part in this change and without the provisional subordination under the Reich Ministry of Economy in force until then, which had been recommended by the I.G. had been a prerequisite for this change.

TRIAL BRIEF FOR MEER

In other words: The I.G. had recommended the provisional administration for these three dyestuff factories. This provisional administration, however, was without the I.G. having any part in it, replaced after a very short time by a general confiscation carried out by the Plenipotentiary for the Four Year Plan, who, for reasons of opportunity, and again without the I.G. having any part in it, took over the provisional administration imposed until then. It has most probably not escaped the attention of the Tribunal that at the beginning the I. G. was in contact with the Reich Ministry of Economy as shown by

Tros. Exh.	1138, NI-8457, Beck 55, E. p. 54, G. p. 85
" "	1139, NI-2749, " 55, " " 56, G. p. 87
" "	1140, NI-1093, " 55, " " 60, " " 94
" "	1141, NI- 8380, " 55, " " 62, " " 97
" "	2003, NI-2969, " "

and that now in

Tros. Exh. 1142, NI-8373, Beck 55, E.p.63, G.p.100 the Main Trustee Office East took the place of the Reich Ministry of Economy as far as questions of the Polish dyestuff factories were concerned.

Interrogation Schwab, transc. E.p. 6061/62, G.p. 6119/21. It is superfluous to examine, whether the I.G. agreed to this change in the safeguarding of the dyestuff factories which is shown here with such great emphasis, or not. According to these documents it was not consulted at all, because not the I.G. but the Reich Ministry of Economy was the office in charge of the provisional administration. It is far more important to establish whether the I.G. had initiated this change or had any other connections with or participations in this change.

TRIAL BRIEF TER MEER

Both questions have to be answered in the negative. It is therefore not necessary to examine this question in order to find out whether the confiscation in accordance with the laws and decrees of the Reich Government and the Government General constitutes a war crime or a crime against humanity, because the I.G. had no part in this confiscation.

b) The provisional administration.

In its Trial Brief the Prosecution looks upon it from the following points of view:

"When 2 Farben directors were finally appointed (Schwab and Schoener) the Ministry made it clear that they were trustees of the German Reich. Still, Farben went on considering them its own representatives."

Trial Brief of the prosecution page 20.

Not only that no proof of all has been submitted for this latter assertion of the prosecution, but we can even say that the contrary has been proven. In this connection again the facts which actually occurred have to serve as basis for deliberations and not those matters which at the first moment of incidents which followed one the other in rapid succession had been proposed purely as improvisations by the I.G.. According to that it is a fact that the Reich Ministry of Economy appointed the Special Agents Schwab and Dr. Schoener from the beginning as its own official trustees (Staatskommissare).

Tres. Exh. 1140, NI-1093, Book 55, E.p.60, G.p.94.

The prosecution has submitted no proof that later on there were any changes in this matter. It adopts therefore the point of view and asserts that the I.G., however, considered these trustees as its own representatives and refers in this connection to the affidavit and the statements of the witness Szpilfogel and to an internal letter of the I.G.

TRIAL BRIEF TER MEER

Iros. Exh. 1157, NI-7371, Book 55, E.p.22, G.p.54.

As far as the witness Szpilfogel is concerned he was not able to maintain his original statements in this connection during the cross-examination.

Interrogation Szpilfogel transc. E.p. 2650/51, G.p.2649/ He did not have, as he was forced to admit on this occasion any knowledge as to whether Schwab and Dr. Schoener acted on behalf of the I.G., neither was he able to make any statements about their powers of attorney. And as far as the letter of the I.G. of 10 November 1942 is concerned

Iros. Exh. 1157, (as above),

it is no proof at all for the actual situation. This letter is an internal letter and this alone proves that it cannot have any power as evidence for matters which were not discussed in this letter. The author of this letter, a minor official of the I.G. in Leverkusen, mentioned the trusteeship administration of the Wels factory by the I.G. only in an illustrating by-sentence, but quite clearly he had no own knowledge about the actual facts. This was also confirmed by the witness Schwab in his interrogation

Interrogation Schwab, transc. E.p.6063, G.p. 6120.

On the other hand the opinion of the person directly charged with the trusteeship administration, namely the official trustee himself, is of decisive importance for the examination of this question.

TRIAL BRIEF FOR MOER

One of them, the witness Schwab, made very detailed statements during his interrogation about the dependence of the trustees which he could fully uphold during the cross-examination.

Interrogation Schwab, transe.B. 6061/62, 6119
G.p.6119/21, 6175.

According to that it has been established that the offices employing him as trustees or officials were the following: The Reich Ministry of Economy, the Chief of the Civil Administration of the German Wehrmacht and as from middle of November 1939 the Official Main Trustee Office East at Berlin resp. the Trustee Office Cracow of the Department Economy attached to the Governor General for the occupied Polish territories, which also currently supervised the activities of the persons in charge of the provisional administration and which received reports. The I.G., on the other hand, did not have the right to issue directives to him and Dr. Schoener, especially as it had granted leave to Schwab and Schoener for the duration of their activity as trustees.

Interrogation Schwab, transe.B.p. 6062, G.p.6120.
Copies of the reports which the trustees sent regularly to their governmental employers were at the beginning sent some times to the I.G. for information, because the trustees most probably assumed that the I.G. would be interested in the problems of general interest contained in these reports. The I.G., on its own initiative, never approached the trustees, on the contrary: It remained completely passive as far as the administration as such was concerned. Dr. ter Meer had stated in the witness stand

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Interrogation ter Meer, trans. E.p. 13145, G.p. 13433, Dr. Schöner has approached him several times and asked for advice, but that he had refused to advise him by stating that Schoener was an official trustee appointed by the State and that he therefore had to decide in accordance with the directives issued to him by the State. The statement of the witness Eckert is also to the effect that the trustees were only responsible to their governmental employers but not to the I.G.

Interrogation Eckert, trans. E.p. 3168, G.p. 3190.

These statements show, we hope, sufficiently clear that the trusteeship administration of the 3 dyestuff factories was handled completely outside the sphere of the I.G. and there exists no reason to assume that the I.G. had ever interfered with the trusteeship administration. The trustees worked independently and were only subordinated to the directives of their governmental superior.

Thus it is clear that the I.G. cannot be made responsible for the official activity of the governmental trustees, but that they acted by order, according to directives and with the consent of their governmental superiors, and therefore it is superfluous to discuss those accusations which are raised by the prosecution against the way the trusteeship administration was carried out, in particular as far as the dyestuff factory Wola is concerned.

Only in order to clarify matters we point out that a great deal of the facts submitted in this connection by the prosecution in its adduction of evidence are misrepresented. Especially as far as the stepping of production in the dyestuff factory Wola is concerned,

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the trustees had respectable reasons for their measures which were described in detail by the witness Schwab during his interrogation.

Interrogation Schwab transc. E.p. 6074 - 6094
G.p. 6131 - 6151

Also all other individual questions of the governmental trusteeship administration as far as the two other dyestuff factories Boruta and Winnica are concerned have been explained fully and in detail by Schwab during his examination,

Boruta: Interrogation Schwab, transc. E.p. 6064 - 74
G.p. 6122 - 30
Winnica: " " " E.p. 6103 - 10
G.p. 6155 - 66,

so that we need only to refer to this statement in order to show that the basic idea of the trusteeship administration explained by the witness Schwab

Interrogation Schwab, transc. E.p. 6061/62,
G.p. 6119

namely the keeping up of the Polish economic life, the satisfying of the supply for the Polish market and to prevent the interference of speculators were really the guide for their actions and not the intention of which the Prosecution again and again accuses them, to carry out spoliation and plunder through deportation, slavery, admitting into a ghetto or concentration camp.

c) The purchase of the Boruta

The prosecution sees an especially serious violation of the regulations of international law in the purchase of the Polish dyestuff factory Boruta by the I.G. Thus for instance it writes in its Trial Brief on page 21:

TRIAL BRIEF TER LEEB

CERTIFICATE OF TRANSLATION

17 June 1948

I, S.A. Hamburger, Civ. No. ETO 20062, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

S.A. Hamburger
ETO 20062

"While the Hague Convention, in the case of real estate publicly owned by the occupied country, strictly limits the occupying power to the usufruct, Farben on its own initiative tried to, and finally did, acquire title to the Boruta property including the real estate, thereby withdrawing this plant from its rightful owner on a permanent basis."

This description is not only biased, but also completely incorrect. When, upon a suggestion by the Main Trustee Office East, prosecution doc. 1144, NI-2998, book 55, Engl.p. 71, Germ.p. 109, the I.G. in contrast to its original intention, which was to merely lease the plant, considered a purchase, the factory was not any more the property of the Polish government which had owned it through a strong majority of shares of a Polish state bank, but had become subjected to the German Reich through the above-mentioned extensive confiscation of Polish government property decreed by Reich laws; thus it was placed at disposal of the Plenipotentiary for the Four Year Plan -- Main Trustee Office East. In practice, this confiscation was similar to an expropriation without compensation, as the Main Trustee Office East, according to Articles 12 and 15 of the Reich Law of 17 September 1940,

pros. ozh. 1128, NI-4601, book 55, Engl. p. 13, Germ.p. 15, had the right to dispose of confiscated ^{real} estate through sale. We may also mention that the Polish government did not exist any longer at that time, and that, in case it had formed a new government somewhere abroad, it was not able to safeguard its rights in Poland or to vindicate them.

If, in view of the de facto legal situation, one may speak, at all, of a permanent expropriation of government real estate from the Polish government, this would have been done not later than with the coming in force of the confiscation law concerned, that means, with regard to Polish government property, 15 January 1940 (prosecution exh. 1126, NI-4603, book 55, Engl.p. 3, German p. 2) . And if the confiscation of such property should be considered as wrong, according to International Law, - which is left to the Court to decide -, this offense ended with the taking effect of the confiscation, that means with the coming-in-force of the law.

This is not in contradiction with the opinion expressed under a) that the offense of an expropriation in a country occupied in war-time consists only in the permanent character of the expropriation. It has, indeed, been stated explicitly under a) that there it was a provisional trustee administration through the Reich Ministry of Economy caused by the events of the war, while the confiscation discussed here has to be considered quite differently, for political reasons, with regard to the time as well as to the legal aspects. The first, the trustee administration through the Reich Ministry of Economy, was a temporary emergency measure, the latter, the legal confiscation, was final. If this confiscation was in contradiction with regulations of International Law - which remains to be seen - this was the case from the moment of the actual confiscation.

As stated in detail under a), the I.G. participated at no time in this confiscation until it came into force; it was neither accessory nor accomplice. If at that time, it acknowledged the facts and purchased the confiscated, or rather "expropriated" firm, it did not thereby create an independent causative condition for the result which, in the opinion of the prosecution, is punishable, namely the permanent expropriation. It would have remained permanently impossible for the Polish government to operate the Boruta dyestuff factory, that means until the time of Poland's liberation, even if the I.G. had not purchased the factory. In this case it would have remained confiscated and would have been administered by a trustee, which represents a forcible withholding of property in the same manner as the taking over of ownership by the I.G., or it would have been sold to other interested parties.

The economic reasons for the endeavour of the I.G. to operate the Boruta as its own property - by a lease through a company especially created for that purpose, or by purchasing the plant - have been stated repeatedly in the course of the trial. Even if one is of the opinion that they are not of decisive importance for the evaluation of the purchase from a viewpoint of International Law, they demonstrate, however, that the prosecution's assertion that the main motive of the I.G. was greed and the endeavour to strengthen Germany for future wars of aggression, is incorrect; they prove that the I.G. had no other motive

Trial Brief for MEER

then, in the general interest of economy, to start and to maintain operations in this rather essential dye-stuff factory, and that, finally, there existed strong economic reasons which demanded closer ties with the plant.

With regard to the first, the witness SCHWAB has given an impressive description of the difficulties with which the plant had to struggle, at its start, and how the government administration had made vain efforts to eliminate them through self-help.

Interrogation SCHWAB, transcript English p. 6065-6067
German p. 6122 -6123,

how he himself finally appealed to the I.G.,

Interrogation SCHWAB, transcript Engl.p. 6067, Germ.p. 6124, and thus the project of a special company to be created for the purpose, was conceived; how things had become stalemate, and how now the I.G., following his personal request,

Interrogation SCHWAB, transcript Engl.p. 6134, Germ.p. 6139 had placed orders with the Boruta and granted credits for these orders,

Interrogation SCHWAB, transcript English p. 6069/70
German p. 6125/6127,

and how finally the government trustee administration made the suggestion to sell the factory, merely in order to secure work. This assistance of the I.G., which consisted in the granting of credits to the Boruta upon urgent requests by the government commissioners, resulted of course, in a considerable financial interest, as the I.G. had to be concerned about the recovering of its credits.

A lack of interest could have had, as consequence for the I.G., the loss of its advance payments. It appeared too, however, that the plant had to be assisted not only with funds, but also with other investments, as the machinery as well as the production methods of the Boruta were completely out-dated. Such real assistance, which could not be expected from the government trustee administration and which it was not in a position to give either

Interrogation SCHWAB, transcript English p. 6067, Germ.p. 6123, exh. v. SCHNITZLER 127, doc. 124, book VII, page 99

could be granted by the I.G. only if it received guarantees that the Boruta was not handed over to somebody else in the near future. Experience has shown that in the chemical industry the necessary experience in production methods, the "know-how", can only be transmitted, if it does not get lost in the transfer, that means when the plant to which the "know-how" is transmitted, remains under the supervision of the originator of this "know-how". This demand was particularly essential with regard to the Boruta, because the majority of the staff were Poles.

If the I.G. really intended to be of assistance to the Boruta, (it had to assist Boruta if only in order to recover its credits) it had to obtain a direct influence on the Boruta, which until then it did not have, and also an influence of a long-term duration. It was first to obtain this by a lease contract;

Trial Brief ter MEER

Prosecution Exh. 1141, NI-8380, book 55, Engl.p. 62, Germ.p.97
this was not in accordance with the opinion of the government
trustee administration

Exh. v. SCHNITZLER 127, doc. 124, book VII, page 99.
The trustee administration suggested, without any intervention by
the I.G.

Interrogation SCHWAB, transcript English p. 6069/70
German p. 6127,

the sale of the plant. The I.G. would, perhaps, not have agreed so
speedily to this proposal ter MEER. s.g., was originally not in
favor of it

Interrogation ter MEER, transcript Engl.p. 13153, Germ.p.13441,
if other, undesirable parties had not already shown an interest
in the Boruta, namely the brothers GUTEROD of Frankfurt/Main who
had contacts with high party and SS circles

Interrogation ECKHART, pros.	Engl.p. 3169,	Germ.p. 3191
" KUEPPER, "	" p. 2915,	" p. 2937
" SCHWAB, "	" p. 6071,	" p. 6128
" ter MEER, "	" p.13154,	" p. 13442.

As I.G. knew that they were not experts in the field, the I.G.
wanted to avoid by all means that they purchased the Boruta and
most likely ruined it within a short time through mismanagement.

The fact that the ties between I.G. and the Boruta became more
and more strong, is not a result of a plan which was prepared,
well in advance, in order to create the right to a subsequent property
claim on behalf of the I.G., but was an unwanted, but unavoidable
result of concurring unexpected circumstances.

Dr. ter MEER's statements as a witness on 3 May 1948 in this connection confirm this fact

Interrogation for MEER transcript Engl.p. 13153, Germ.p. 13441/42.

The possible importance of the installation for the German war production was not decisive for the I.G. in the Boruta case. The letter of 14 September 1939

Prosecution exh. 1139, NI-2749, book 55, English p. 56,
German p. 87

refers indeed to this fact; it results, however, clearly already from the connection in which this sentence is placed, that it did not refer to the production of Wehrmacht items, but to the possibility of using the factory as a branch plant in case of a possible danger for or suspension of operations of plants located in the West of the Reich. With the exception of a small department where the Poles had produced explosives and tear gas, and where work was immediately stopped by the commissioners in accordance with government directives,

Interrogation SCHWAB, transcript English p. 6065, German p. 6122/23

the Boruta did not possess any installations at all, for the production of Wehrmacht requirements. No Wehrmacht requirements were produced in the Boruta, neither after the start of the trustee administration, nor after the acquisition by the I.G.; neither was the production of Wehrmacht requirements prepared, nor were any chemicals produced which could be used in the production of explosive, powder and poison gas.

Interrogation for MEER, transcript English p. 13146/47
German p. 13434/5.

The letter of the Reich Ministry of Economy of 21 September 1939 states

Trial Brief ter MEER

furthermore

Prosecution Exh. 1140, NI-1093, book 55, English p. 60d
German p. 94

that the commissioners received instructions "to adapt the plant and the installations to the requirements of the German war industry"; this does, however, not mean that only Wehrmacht requirements or preliminary products for them might be produced. This direction was rather intended to prevent the plants from producing products which were not absolutely essential for the maintenance of the German wartime industry, e.g. luxury products. The Reich government had already issued a general decree to this effect on 4 September 1939.

Defense Exh. 206, doc. Wi.R. 15, volume economy regulations I page 29.

No negotiations with the Army Armament office (Heereswaffenamt) concerning a shifting of production to Wehrmacht requirements have ever taken place between the I.G. and the government commissioners.

Interrogation ter MEER transcript English p. 13146/47
German p. 13435.

Thus it may be concluded that the acquisition of the Boruta by the I.G. does not represent an action infringing regulations of International Law. It results furthermore that the acquisition of Boruta was not a deliberate intention of I.G., but that I.G. was forced by circumstances to invest in the plant so much funds that, in order to recover its investment, it finally also agreed to purchase the plant and that this purchase did not represent a strengthening of the German war potential.

d) the taking over of the Winnica.

The establishment of this dye-stuff factory has been described in detail in the adduction of evidence

Interrogation KUEPPER, transcr. Engl.p. 2914/15, Germ.p.2935/36
" SCHWAB, " " p. 6099-6102 " p.6155-6157
" ter MEER, " " p. 13147/48 " p. 13146

It also results from the prosecution documents

Prosecution Exh. 1138, NI-8457, book 55 Engl.p. 54, Germ.p. 85
" " 1139, NI-2749 " 55 " p. 56, " p. 87
" " 1141, NI-8380, " 55 " p. 52 " p. 97
" " 1142, NI-8373, " 55 " p. 63, " p. 100
" " 1164, NI-6941, " 56 " p. 35, " p. 70.

Winnica was a corporation and was considered by the public as a French enterprise. Only 50% of the share capital of Winnica was, however, in French possession, the other 50% of the shares belonged to the I.G. and were deposited at the I.G. Chemie, of Basle, which firm was on friendly terms with the I.G. The reason why the I.G. could not permit its participation in the Winnica plant to become public knowledge was an existing prohibition for Germans to establish and to operate firms in Poland. The I.G. received, however, from its French co-partners all current information concerning production, sales, financial matters, balance etc. with regard to Winnica, and conferences concerning technical problems of Winnica also took place between I.G. and the French shareholders. Until the beginning of the war the I.G. had invested a total of 440.000 RM through the French partners in installations and stocks of the Winnica and had had a reliable I.G. official appointed as plant manager of Winnica.

Interrogation SCHWAB, transcript English p. 6102/3
German p. 6158 - 6160.

Thus the I.G. could rightly consider itself as the co-owner of half of Minica A.G. If, in spite of this fact, it requested from the Reich Ministry of Economy, during the first days of the war, that Minica be administrated too by a trustee, the reason for this was probably that, at first, in view of the events of the war, this was the only way to safeguard the operation and management of the factory. These proceedings have not clarified why subsequently Minica too was included in the political action of confiscation by the Plenipotentiary for the Four Year Plan. Dr. ter MEER expressed, on the witness stand on 3 May 1948,

Examination ter Meer Rec.Engl.p.13149, German p.13436

the assumption, -which may be correct, - that the French half of the shares was considered as enemy property. The fact is, however, that this dy-stuff factory too was placed under the trustee administration of the Main Trustee Office East. This administration was exercised by the economy department of the Governor-General in Poland, as, after the division, the Minica was located in the so-called Government General. The I.G. had therefore, in this case too, no possibility to influence matters.

The industrial interest of the I.G. in Minica could not have been taken into account, if this situation had been maintained, in particular because it soon became obvious that great efforts had to be made in order to keep Minica in existence, as its main

markets in Poland were eliminated by the new borders and by the entering of the Russians into Eastern Poland.

Examination Schwab, Rec. Engl.p.6104/5, Germ. p.6160.

The I.G.^{IGF} forced therefore to assist from its own funds this plant too which it had always considered as its affiliated company. In order to accomplish this purpose, it wanted to acquire also the other half of the share capital, a thing which had become possible since the armistice with France. Negotiations with the French share holders were started therefore, viz. with the Etablissements Kuhlmann, the St. Denis Corporation and the St. Clair du Rhône Corporation, which on 18 November 1941 resulted in a written agreement

Pros. Exh. 1163, NI-8394, Book 56, Engl.p.32, Germ.p.67, according to which the title of the Innica shares belonging to these companies was transferred to the I.G. against payment of the sum of 1 million RM or 20 million French Fr. By this agreement, all claims existing until now between these French companies and the I.G. originating from the contract which was in force up to this time, were to be considered as extinct.

Pros. Exh. 1163, as above.

It has been established

Pros. Exh. 1625, NI-9266A, Book 56, Engl.p.36, Germ.p.76, that this sum of 20 million French Frs. was paid by the I.G. in two part-payments, on 1 December 1942 and on 13 September 1943, which required a previous authorization by the Reich

Ministry of Economy.

Pros. Exh. 1164, NI-6941, Book 56, Engl.p.35, Germ.p.70.

The Prosecution in its trial brief calls this purchase of shares (page 22) "a further spoliation". It could, however, not furnish any evidence explaining why this act is to be considered as spoliation. It is correct that, after Germany's collapse, a French civil court declared the purchase void, as being a spoliation, in accordance with a Decree of the French government of 9 June 1945.

Pros. Exh. 1625, as above.

This decision may, however, not be considered as binding for this court. The judgment of the French Civil Court does not make clear the detailed reasons for the annulment. It does not discuss the facts in the case at all. The I.G. was not represented in these proceedings and could not make any statements in these proceedings before a civil law court. For these reasons already, no facts with any bearing on this case may be derived from that judgment. Apart from this, the French court rendered its judgment from viewpoints of civil law, and it is an internationally recognized principle that not every annulment of agreements which has been pronounced by a civil law court does also involve a finding of the court that the action was a punishable offense.

The Prosecution does not have any further evidence for a possible extortion, compulsion or other criminal offenses.

Neither has the Prosecution asserted that the purchase price did not correspond to the value of the shares. What then does represent, in this case, an act of spoliation or any other action by the I.G. in contrast with the regulations of International Law? The entire business was carried on in such a correct manner, in mutual agreement, as is the case in a normal purchase. The I.G. could operate in good faith the dye-stuff factory Hinnica which it now owned. This was carried out in the following manner: a request to rescind the confiscation was addressed to the sub-department Trusteeship of the Governor-General in Poland -the competent administration office of the Main Trustee Office East-, as a consequence of which the confiscation was then rescinded on 8 July 1942.

Pres. Rec. 1165, HI-8389, Book 56, Engl.p.37, Germ.p.73.

The subsequent fate of Hinnica has been told by the witness Schwab in his statement

interrogation Schwab, Rec.Engl.p.6106/7, Germ.p.6162/63, (Schwab was appointed manager of this plant after the taking over by the I.G.) As a consequence of the removal of the Protective customs duties established by the Polish government through the German authorities in December 1942, the operation of the factory became unprofitable, work was suspended by the I.G., and the buildings were leased to a pharmaceutical factory. The machinery was used for supplementing the Boruta works.

Thus neither the fact nor the circumstances of the taking over of Hinnica by the I.G. offer a basis for the Prosecution's charge of spoliation.

c) Purchase of machines and dyestuffs by I.G.

Speaking of the Prosecution's Statements, which are not clear at all and show a lack of details, it results from document books 55 and 56 of the Prosecution and from its Trial Brief that I.G. apparently is to be made responsible for the purchase of an Anthrachinon apparatus of Winnica, of a betacyanaphthol acid installation of Wola, as well as of 2 installations of the Blizyn plant and of Wola dyestuffs. Further, Pros.Exh.1158, II-6738, Vol.56, Engl. p.25, German p.58, of an interrogation transcript of the Polish national Lasocki, speaks of the erection of a chemical factory in Sarzyna, which is alleged to have been "sent by the I.G.Farben management to Germany during the occupation".

1) As far as the last fact, Sarzyna, is concerned, the Prosecution failed to submit any further evidence with the exception of the interrogation transcripts of Lasocki, who, however, could not be cross-examined. The witness Schwab, however, could explain (Exam.Schwab, transcr.Engl. p.6111/12, German p. 6167/68) that the Sarzyna plant was an explosives factory of the Polish war ministry, which was administrated first by the Main Trustee Office East and later on by a special trustee. According to Schwab's declaration on oath, the I.G. had nothing whatever to do with this plant at any time.

As the witness Lascecki was not produced for cross-examination, and as his testimony is anyway so brief and general as to mean nothing, no facts can be established on the basis of this deposition. At the very worst, this matter must be regarded as not clarified. No criminal act has been proved to any defendant.

2) As far as the "Blizyn plant (Poland)" is concerned, the Prosecution has submitted three accounts sent by the OKI. to the I.G. in respect of deliveries of apparatus from this plant, amounting to 33.000 RM.

Pres. 1168, NI-6064, Vol. 56, Engl. p. 89, Germ. p. 129.

All the remaining evidence, however, contains no indications as to which factory and which incident is meant. Dr. for MEER declared in the witness stand

Examination t. Meer Rec. Engl. p. 13157, Germ. p. 13445

that the whole matter was unknown to him, and the witness Schwab

Examination Schwab Rec. Engl. p. 6111, Germ. p. 6167

never heard about Blycin. The Prosecution, on their part, did nothing in order to substantiate their vague assertion made in the "Trial Brief", which states: "Finally we have shown in what way the I.G. Farben simply took away the apparatus from the Blizyn plant". The accounts submitted by them prove nothing as far as the question of removal is concerned. In order to establish a criminal fact, however, it is necessary to prove to the Court at least some details of the incident concerned, and in

accordance with the rules of the Nuernberg Court, the burden of the proof rests with the Prosecution. The only evidence

Pros.Exh.1158, NI-6064, Vol.56, Engl.p.89, Germ.p.129 cannot be regarded as sufficient in this connection, and for this reason it must be considered that no proof has been furnished, in the Blizyn case either, of any criminal act having been committed by any of the defendants.

Neither is this altered by the fact stressed by the Prosecution in this connection as an alleged proof of the I.G.'s criminal routine, i.e. the fact that the accounts show the I.G.'s name in print. Since one knows nothing of the necessary details of this matter, as I have just shown, this fact cannot replace the lacking proof of elements constituting an act of spoliation contrary to International Law.

3) There remain the cases of the Anthrachinon and the Pata-hexynephtal apparatus:

In this case, too, the I.G. was prepared in the first instance to hire the apparatus against payment of an adequate rent, while explicitly recognizing the conditions of ownership and undertaking to transport them back after the termination of contract.

Pros.Exh.1154, NI-8378, Vol.56, Engl.p.17, Germ.p.49
" " 1160, NI-8396, " 56, " " 29, " " 61

But later on, without their doing anything about it, they were requested by the Administrative Authority to buy the apparatus. If the I.G. had not followed this suggestion, the apparatus, like so many other machines and apparatus from requisitioned plants in Poland, would have been grabbed by the dealers who had been given a State Monopoly.

Testimony Schwab, Rec.Engl.p.6098/99, Germ.p.6154

these dealers would have sold them at a ruinously reduced price and thus have prevented their being used for a good purpose. Under the given circumstances the I.G. did the best thing that could be done about the apparatus, if you took all factors into unbiased consideration -they bought them themselves and thus managed in the long run to save at least one set of apparatus for the legitimate owner.

With regard to the question of the legal evaluation of these purchases as regarded from the point of view of the Hague Rules of Land Warfare, the expositions made in connection with the acquisition of the Boruta under b) apply here as well - i.e. the argumentation that if an act of objectment could be assumed at all in this case, this act had already been completed by means of the confiscation by the HTO at the time when the purchases were made, and the purchases made by the I.G. could not therefore constitute a new unlawful act.

On the basis of these agreements the Botahemaphitol acid apparatus were taken by the I.G. to the Boruta. From there they were taken to Offenbach on the Main in 1944, where they had still not been unpacked when the U.S.troops confiscated them in February 1946

Pres.Lth.1628, NI-12394, Vol.56, Engl.p.26, German p.60 and returned them to the Boruta plant in 1946.

Examination Schwab, Rec. Engl.p.6098, German p.6153.
The Anthrachinon apparatus of the Minica were dismantled after the conclusion of the afore-mentioned agreements.

Examination Schwab, Rec. Engl.p.6110, German p.6165.

CERTIFICATE OF TRANSLATION

17 June 1948

I, Helene LALLEMAND, Civ.No. AGO B 398 030, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Helene LALLEMAND
Civ.No. AGO B 398 030.

Whether, however, it was sent to Ludwigshafen according to the original plan of the I.G.

Prosc. Exh. 1153, NI = 8397, vol. 56, English P. 15, German Page 47.

has not been proved. Dr. PAUMANN who according to

Prosc. Exh. 1161, NI-8400, vol. 56, Engl. P. 29, Germ. p. 63

was interested to get these installations for Ludwigshafen died in the meantime and therefore can not give any information. Neither could Dr. ter MEER when on the witness-stand on 3 May 1948

Ter MEER testimony record transcr. Engl. p. 1315c, Germ. p. 13438. testify about the whereabouts of the installation.

Around these facts the prosecution has build phantastic contentions with the tendency to prove that the I.G. had intents to rob. To this it has to be said:

As to Wbla there was no need^{at} all to shut down the factory it had been shut down at the arrival of the Stadtkommissar. Owing to war damages and lootings by the Polish population as well as to the incomprehensible behavior of the owner who had fled it was already so considerably ruined that the commissioners had to decide to keep it shut down. This decision was made by the state trustees on their own responsibility after local examination and in agreement with the locally competent state administration agency, the Landrat.

SCHULB testimony, record Engl. p. 6079, German p. 6136

The suggestion made by the I.G. to lease the betaoxynaphthol acid installation and

to pay an adequate rent is impregnable, because according to the explicit suggestion of the I.G.

pros. exh. 1154, MI-8378, vol. 56, Engl.p.17, German p. 49
(sect. 2)

the property of Wola was to be respected and according to sect. 7 of the lease contract the I.G. bound itself to retransfer the leased installation to Wola in a state fit for operation, at its own expense. Thus it was not a matter ^{of} expropriation. It was not I.G.'s fault that this lease contract had not been put into effect since the trusteeship administration wanted to conclude a contract of sale.

SCHUB testmony, rec. Engl. p. 6096, German p. 6152.

The reason why the I.G. agreed with this condition of the trusteeship was not its wish to use an opportunity of "robbery", because this installation had no importance for the I.G.

TER MEER testmony, rec. Engl.p. 13151, German p. 13440.

The I.G. rather wanted to save the installation from scrapping

TER MEER testmony, rec. Engl. p. 13151, German p. 13440

or from wasting by monopolistic merchants appointed by the state who sold the other ^{ma}chines and appliances of Wola.

SCHUB testmony, rec. Engl. p. 6098/99, German p. 6154.

In these matters Dr. HAGENBECKER from the I.G. Offenbach particularly took an initiative and even sent a foreman to Poland to inspect the installation.

Pros. exh. 1627, MI-21395, vol. 56, Engl.p. 25, German p. 60
ter MEER testmony rec. Engl. p. 13151, German p. 13430.

The red thread of criminal intents to rob, which the prosecution wants to perceive during the period from 7 September 1939 until the conclusion of the contract of sale and until the transfer of the installation to Germany, is therefore utopian.

In the case of the antraquinone installation in Finnica the intentions were different in so far as this machine was a production secret of the I.G. that had been licensed to Finnica half of which was I.G.'s property.

SCHWAB testimony, rec. Engl. p. 6108, 611e, German p. 6165, 6166

In this case, too, the trusteeship, after initial negotiations about a lease which would respect the existing property situation,

Pros. Exh. 1160, NI-8396, vol. 56, Engl. page 27, German p. 61 had made a condition that the factory can be acquired only by purchase.

SCHWAB testimony, rec. Engl. p. 6110, German p. 6156.

Although the interest of the I.G. in operation of the machine for its own use was but slight since it did not need the installation,

Ter MEER testimony, rec. Engl. p. 13150, German p. 13437 the intention of the confiscating authorities to remove the installation from the vicinity of the Russian demarcation line (Finnica was located not far from this line)

SCHWAB testimony, rec. Engl. p. 6110, German p. 6165 was identical with I.G.'s intention in this respect.

Ter MEER testimony, rec. 13150, German p. 13438.

Also the danger that the installation, like it happened with all the other machines, might have been acquired by state exploitation commissioners and thus the production secret of the installation of the I.G. would have been lost,

SCHWARZ testimony, rec. Engl. p. 6110, German p. 6166
might have influenced the I.G. to accept the sales offer of the HTO ;
It has been therefore sufficiently clarified that in the case of the anthraquinone installation of Wnrica there were no intents to rob involved but that the cause were considerations of keeping production secrets. Thus the purchase of this plant may be called a re-purchase.
4) Finally as far as purchase or taking over of dies or intermediate products by the I.G. from the stocks of the Wola dye factory are concerned the

Pros. exh. 1157, NI-7371, vol. 56, Engl. p. 22, German p. 54
submitted by the prosecution do not say anything about an actual taking over but they refer only to an examination of samples. Whether those samples were satisfactory and whether the stocks in question were then taken over by the I.G. has not been proved by the prosecution. Witness MASOCH interogated by the prosecution in Poland

Pros. exh. 1158, NI-6738, vol. 56, Engl. p. 25, German p. 28
who by the way has not been produced for cross-examination, could not testify anything about it. Witness STPIFOGEL has testified in his affidavit

Pros. exh. 1159, NI-10416, vol. 56, Engl. p. 26a, German p. 61a
about particulars of the taking of the dies stocks by the commissioners SCHWARZ and Dr. SCHOTTER

But in his affidavit he falsely identified them with the I.G.

Thus the actual responsibility of any of the defendants has not been proved, especially since Sepilfogel, as already mentioned, could not explain during cross-examination

SCHWABER testimony rec. Engl. page 2550/51 ; German p. 2649/50 that SCHWAB and Dr. SCHONER actually acted on behalf of the I.G. and especially on behalf of a particular defendant. In contrast to that witness SCHWAB testified under oath

SCHWAB testimony , rec. Engl.p.6091,German p. 6146 that the dye stocks of Wole had been sold by state trustees to former clients of Wole for cash and that the proceeds had been transferred to the bank account of the trusteeship administration, but that the defendants had nothing to do with it. The evidence therefore also as to this count is not a sufficient proof of a criminal act of a defendant.

f) Participation of the I.G. in the germanisation program and the nationalities policy.

From several trials in the Nuernberg Tribunals particularly from the recently finished case III it has become known that the German Reich Government had executed in all occupied countries during the last World War but particularly in Poland an extensive program of germanisation through a special nationalities policy; due to this policy hundreds of thousands of Poles suffered most serious interference into their individual sphere of life and values amounting to hundreds of millions of

marks were confiscated or expropriated by the Reich. The prosecution not only charges the defendants with active participation in this program but also accuses them of having incited such acts.

(Already under a) it has been shown in detail how founded this charge is as regards the confiscation of the three Polish dye factories Boruta, Wola and Winnica, and that the political confiscation of state- and private property in Poland by the Reich Government had been outside of the sphere of influence of the I.G. Furthermore it has been shown in the following points that the purchase of the dye factory Boruta and the taking over of the dye factory Winnica were not a participation of the I.G. in the German sequestration program either, let alone an incitement thereto, since in these cases, too, the Reich Government had created already final facts accomplis; it would have been impossible for any German not to recognize these facts. The fact that for the validity of the purchase contract the permission of HIMMLER as Reichskommissar for the Securing of German Nationality was obtained

Proc. exh. 1146, NI-8382, vol. 55, Engl. p. 78, German p. 119
is by no means a proof of a support of these I.G. measures by HIMMLER ;
it was an automatic legal condition of validity of the contract like the permission of the HTO.

Proc. exh. 1128, NI-4601, vol. 55, Engl. p. 13, German p. 15
Per. 15, 12

If one would actually accuse the I.G. in these cases of some intent
they
then/could

never had been intents to germanise Poland; rather these were motives of an industrial egoism which however never exceeded the limits of a sound business egoism and do not possess any political motives or color. The charge of participation in the great program of germanisation is therefore completely unfounded.

If the prosecution wanted to show a participation of the I.G. in the execution of particulars of this program which probably was the intention in the case of handling social policy at the I.G. plant Boruta (i.e. after the purchase) the following has to be pointed out: The promise of the I.G. in its letter dated 19 July 1941 to the representative of the Reichskommissar for the Securing of German Nationality,

pros., exh. 1148, MI-806, vol. 56, Engl. p.1, German p. 1 to do an exemplary job as to nationality policy, and the statements of the I.G. representative at the conference on 2 December 1940

pros. Exh. 1145, MI- 1198, vol. 55, Engl. p. 73, German p.110 are nothing but noncommittal, diplomatic figures of speech which were not put into effect later on. Only this matters. That conditions existed for Poles at the Boruta plant - until the end the majority of the employees there were Poles - has been shown in detail by witnesses KUEPPER

testimony KUEPPER's rec. Engl. p. 2920, 2931,
German p. 2940, 2941, 2951

and SCHWAB

testimony SCHWAB rec. Engl. p. 6114, 6122-6129
6115, 6133/34
German p. 6170, 6176/64, 6189

by SCHUB's affidavit

proe. exh. 1857, Doc. II-7369

and MITZDORF's affidavit

exh. ter MEER 245, Doc. 70, vol. III, Engl. p. 52,
German p. 52

According to the above I.G.'s social policy toward Poles was within the legal limits always possibly liberal. Also, the social institutions of the plant for the Poles were expanded. When SCHUB became director of Boruta after the plant had been purchased by the I.G. he supported wages of Polish workers and employees since in this matter the Reich Government had issued legal directives according to which a part of the Poles' wages had to be retained. When a German sometimes actually laid hands on a Pole then it was immediately stopped. The Poles were appreciated as efficient workers. There was nothing shown in the evidence which would justify even remotely the strong expressions of the prosecution in this respect as "Deported, enslaved, confined in ghettos or concentration camps". Out of all this not even one case was caused by the I.G. in Poland nor was the I.G. involved in any one of them. Therefore it has been proved that the I.G. did not participate in any way in the program of germanisation and enslaving.

G. Participation of defendant ter MEER.

Previous explanations have served the purpose

to prove that after proper evaluation of the evidence before the court as to count Poland the I.G. can not be charged with a violation of Control Council Law No. 10, the Hague Rules of Land Warfare or other international laws; the following explanations shall prove that this charge pertains even less to defendant Dr. ter MEER. As a matter of fact Dr. ter MEER could not be charged by name in the trial brief with a particular responsibility as to this count. It is rather obvious that Dr. ter MEER being a technician could not have been interested in the case Poland as was e.g. the commercial management of the I.G. This assumption is correct not only theoretically, in fact it is the key to an evaluation of evidence consistent with facts. As witness SCHULPS pointed out during his testimony

SCHULPS's testimony r.c. Engl. p. 6057/58, German p. 6113/14
I.G.'s activities in the dye business, based on the international dye cartel were particularly in the case of Poland the main motive for I.G.'s measures. Those were then primarily business motives which caused the I.G. to take interest in Polish dye factories. Defendant Dr. ter MEER was not interested at all in these factories from the technical viewpoint. Consequently his role in the Poland case by no means leading or responsible. He neither participated in obtaining negotiations with agencies outside the firm nor were his activities within the firm in the Poland case of any significance.

His name appears in only three documents submitted by the prosecution in the Poland case, namely on

pros. exh. 1163, NI-84394, vo. 56, Engl. p. 32, German p. 67
the note in file about the agreement from 21/24 July 1941 concerning the taking over of the Winnica shares from the French and on two almost identical letters of the I.G. to the Regierungspräsident in Witzmannstadt,

pros. exh. 1878, NI - 6945

in which the formal permission of this state administration authority for the purchase contract Boruta or the new establishment of the firm was requested.

As to the first document Dr. ter MEER stated himself on the witness stand that he had conducted the final negotiations with the French about the Winnica shares.

ter MEER testimony rec. Engl. p. 13151, German p. 13439

These negotiations were conducted, as it has been explained already under b), in an absolutely fair manner and resulted in a mutual contract, which may be justified at any time, without any pressure being exercised on the French. By the way such pressure was not found by the French civil court in its judgment.

Pros. exh. 1166, NI - 9266, vol. 56, Engl.p. 38, German p. 74
" " 1625, NI - 9266 1, vol. 56, Engl.p.38a, German p. 76

The Paris civil court finds only that the transfer is a transaction in favor of an enemy and was made with the agreement of the stock holders during the German occupation. These findings were sufficient to the civil court for its judgment.

Neither the I.G. nor the defendant ter MEER were heard in these proceedings at all. This judgment is therefore by no means a precedent in our proceedings especially since the legal basis of this civil court proceedings was absolutely different.

As to the letters of the I.G. to the Regierungsräsident in Litzmannstadt they are simply formal and legal requests for permissions which were prescribed for the creation of new firms in the so called Warthegau.

Pros. exh. 1152, NI-6935, vol. 56, Engl. p. 14, German p. 45
This request signed by Dr. ter MEER together with Dr. v. SCHNITZER is therefore a secondary matter of form and not an essential act in the purchase of Boruta. The statement, made by witness ECKERT in his affidavit

pros. exh. 387, NI-7367, vol. 56, Engl. p. 34, German p. 121
that in his activities concerning Polish dye factories he acted on directives of Dr. v. SCHNITZER and Dr. ter MEER, is so undefined and general that a particular responsibility of Dr. ter MEER can not be based on it. As results from Dr. ter MEER's testimony on the witness stand on 3 May 1948 his own knowledge about the complex of Polish problems was restricted to purely technical things. He never came into contact with the Wola affair and with witness' Dr. STEINBOCK's fate in particular. When he visited Poland, which he did only once during the war, and devoted half a day

to Boruta, the occasion for this visit was connected with some personal business and at the same time it was a purely technical one like is shown by his testimony on the witness stand.

Ter MEER's testimony rec. English p. 13155/56, German p. 13444.
His first trip to Poland in 1934

ter MEER's testimony rec. Engl.p. 13142, German p.13430
had no connection with what happened after the outbreak of the war and was mentioned by him only to make his statement complete.
His capacity as technical chief of the dye factories of the I.G. explains also the suggestion of the commissioner Dr. SCHOTT which Dr. ter MEER mentioned.

Ter MEER's testimony rec. Engl. p.13144, German p.13432.
This suggestion was purely internal, Dr. ter MEER never expressed his suggestion outside of the firm, this was rather the business of those who conducted the negotiations.

Proc. exh. 1167, NI-8783, vol. 56, Engl.p.87, German p.125
Affidavit Dr. KUEPPER

Also the later cooperation of Dr. ter MEER in the negotiations about the purchase of the Boruta dye factory was restricted, as Dr. ter MEER told it himself, to information given to the negotiators on the occasion of the final negotiations in Berlin about a rational Boruta expansion along lines of technical demands; this, too, can not be considered even remotely as a remarkable cooperation.
As shown by the evidence Dr. ter MEER's cooperation in the entire Poland case has been limited to these few occasions.

It is therefore established that during the initial stage of the measures taken by the I.G. in Poland Dr. ter MEER did not participate in them at all; neither did he take any initiative during this period of development. His activities later on, worth mentioning only as regards the acquirement of the Winnica stock, can by no means be objected to as has been repeatedly proved. It can not be held against this that after all Dr. ter MEER was the leading technician in the dye plants of the I.G. and that even his knowledge about the Poland case constituted a punishable responsibility. Such an argumentation would be erroneous for the following reasons: The defendant Dr. ter MEER is not a lawyer, he is a technician.

Ter MEER's testimony r. c. Engl. page 13157, German p. 13445/46
The problem as it exists today, whether the taking over of two Polish dye factories constitutes looting according to Control Council Law, issued ex post, or a violation of the Hague Rules of Land Warfare, is a purely legal one. Today, after several trials and the publication of official documents have shown to any German the whole importance of German measures in Poland, it is easy to say that everybody should have abstained from business in the Warthegau and Government General.

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According to information possibilities available then to the Germans and according to the official view of the German government the Polish State had ceased to exist, the Polish Armed Forces had surrendered unconditionally, the Polish Government had left its country; therefore it was the duty of all the interested to create as fast as possible normal conditions in these territories. Perhaps a lawyer had in addition to that the duty and the possibility to think over the problem of international law as created by this de facto status if however, he had objective grounds upon which to base such an opinion. At any rate one can not demand this from a technician like Dr. ter MEER.

Just for this reason there were many lawyers of the I.G. available for him to form his opinion in legal matters, above all the legal division of the Farben competent for this case. They dealt with these cases in Poland. It has not been proved that they had reported any objections against the measures in Poland to the Vorstand, particularly Dr. ter MEER. Although the prosecution claims to have proved the point by ECKERT's and KUTTER's affidavits

pros. exh. 397, NI- 7376, vol.56, Engl.p.84, German p.121
" " 1167, NI -8783, vol.56, " " 87, " " 125

there is no proof of Dr. ter MEER's male fides in these prosecution exhibits. ECKERT restricted explicitly the sphere of those to whom he told his legal objections

to Dr. von SCHMITTER and SCHUP, KUEPPER also mentioned by name those who knew with him of it; Dr. ter MEER was not among them. Besides, during cross-examination KUEPPER restricted considerably his affidavit in this respect and at the same time stressed the point again that discussions about such legal matters were held on principle "among us" i.e. within the narrowest legal limits.

KUEPPER testimony rec. Engl.p. 2930 German p. 2941.

It is obvious that it was Dr. KUEPPER's duty to tell the Vorstand about legal, especially criminal objections. Dr. ter MEER's statement on the witness stand

ter MEER's testimony rec. Engl.p. 13154, German p. 13443
" " " " " " 13157/58, German p. 13445/6

that he did not know anything about legal objections and as to these matters relied upon his legal advisors has not been shaken in any way. Therefore it has not been proved that Dr. ter MEER is guilty of a criminal act in the Poland case neither as to points of facts nor points of law.

B. Russia.

The prosecution has charged the I.G. that it had acquired shares in the so called Eastern Companies founded by the Reich in Russia and, particularly in the case of the Russian factories of synthetic rubber, had wanted to acquire exclusive rights to the Russian process. In connection with this the prosecution accused Dr. ter MEER during cross-examination on 17 February 1948 that together with Dr. MEYER he had worked out a purchase contract for the Synthese Kautschuk Ost Ltd. Dr. ter MEER answered - there was no proof to the contrary -

ter MEER's testimony, rec. Engl. p. 7219/20/21

German p. 7278/79

" " " rec. Engl. p. 7279

German p. 7288/89

" " " rec. Eng. p. 13064

German p. 13392/93

that this was done along the pattern of a model contract which had been construed by the Reich Ministry of Economy and had been sent to the I.G. for an opinion. Dr. ter MEER recommended the addition of some provisos which were necessary for I.G.'s interests. The whole matter remained theory since the Synthese Kautschuk has never been founded and the plans have never acquired practical importance. It is therefore erroneous to charge Dr. ter MEER with a criminal act.

C. FRANCE.

I. The Francolor - Agreement.

As far as the Francolor agreement is concerned, the task of presenting the general considerations applying to this subject has been undertaken by counsel for the defence of the defendant SCHNITZLER, who will cover both the facts and the legal questions involved. In my capacity as defense counsel for the defendant ter MEIER I shall, therefore, only deal with those considerations which concern the evaluation of the evidence as far as my own client is involved.

In the same way as he did in the case of Poland, Dr. ter MEIER, when on the stand, dealt with the case of France and in particular with Francolor much more comprehensively than it would have been necessary in order to clarify my client's personal implication in the matter. The reason for this in both cases was the fact that Dr. von SCHNITZLER did not testify on the stand. Dr. ter MEIER felt, therefore, that his statement would provide clarification - which would have been lacking otherwise - of many questions. In consequence, his statement was not only made for his personal justification.

1) The Charge.

In the Francolor case, too, the defendant Dr. ter MEIER - even if not mentioned by name - is facing the charge of having participated in an act of spoliation. The Prosecution has in the case of Francolor coined the term of "spoliation by seemingly legal methods". In the opinion of the Prosecution, spoliation is constituted by the following assertions: I.G. and/or several defendants forced a number of French dyestuff factories to make over their plants to a "combine"

headed by I.G.; they did so by exploiting the economic crisis brought about in France by the German victory, by instigating or using the interference of German government agencies, and by further means of pressure initiated by I.G. It is further asserted that this "combine" was then misused by I.G. and/or several defendants in order to strengthen the German war potential, to obtain unjustified profits for I.G., and to support the German program of compulsory labor.

2) The Evidence.

As a matter of fact, the Prosecution has, during this proceeding, never expressly claimed a specific personal responsibility of the defendant for MEER based on the submission of individual specified facts. In any case, it can at least be assumed that the responsibility of an individual defendant can only be constituted in so far as he has himself taken a guilty part in criminal offenses or instigated same. With regard to the fundamental question whether or not a criminal offense is constituted in the Francolor case at all, I refer to the arguments preferred by the defense counsel for the defendant von SCHNITZLER, and I fully accept his arguments put forward in this connection as correct. But as far as the defendant for MEER is concerned, no facts constituting a criminal offense have been proven at all. I shall establish this by covering the facts in historical order:

a) The period prior to the Wiesbaden conference of 21 November 1940.

As far as this phase of the Francolor transaction is concerned,

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the Prosecution has not produced any evidence to the effect that Dr. ter MEER developed any activities of importance in this matter.

In a prosecution document

Pres. exh. 818, NI-6293, book 45, English p. 140,
German p. 140,

he is mentioned as one of 28 persons attending a meeting of the Commercial Committee dealing with problems of economic policy. No decisive part played by ter MEER in these discussion is evident. Dr. ter MEER had nothing to do with the ensuing trips of certain I.G. executives and with the negotiations conducted with the Reich Ministry of Economy, the Armistice Commission and the economic agencies of the German Military Administration in the occupied western territories.

Pres. exh. 1052, NI-6840, vol. 51, English p. 199
German p. 67,
Pres. exh. 1241, NI-6839, vol. 57, English p. 31,
German p. 30 .

At that time, he never went to France at all. During this period, he saw the members of the Armistice Commission only once, namely as lunch guests in the I.G. casino Gruenbourg. From the outset, the initiative for the deliberations of I.G. concerning France originated with the commercial side. In Dr. ter MEER's own deposition in the stand dated 30 April 1948

-examination ter MEER, translation English p. 13042, German page 13369/70 - it is stated that it was only at about the middle of October 1940 when he started to take a more active interest in the Francolor affair; at that time internal deliberations started in I.G. in order to prepare the prospective Wiesbaden conference. In a meeting held in Frankfurt/Main, he then strongly objected to the suggestion of a 51% participation

in the prospective company.

Examination KUEPPER, translation English page 6025, German page 6080.

In as much as the Prosecution used the measures taken by I.G. at this stage of the preliminary negotiations concerning the Francolor agreement as a basis for the assertion that I.G. deliberately applied tactics of procrastination and prepared a conspiracy with the Reich authorities for the purpose of putting pressure on the French- actually, this was not the case, as argued convincingly by Dr. SIEMERS in his trial brief on behalf of the defendant Dr. von SCHMITZLER - the documents produced by the Prosecution do not contain any material incriminating Dr. ter MEER. In particular, it has not been proved that he ever saw the document of the defendant KUGLER

pros. exh. 1886, HI-14234, submitted later;
in his cross-examination on 17 February 1948

- examination ter MEER, tr. English p. 7320, German p. 7290 -
he denied this. Neither can it be assumed that he co-operated in the drawing-up of the memorandum

pros. exh. 1245, HI-5901, vol. 57, Engl.p.64, German p. 75
on the basis of which a report was made at the Wiesbaden conference.
As far as the personal intentions of the defendant Dr. ter MEER played a part in the Francolor transaction, they were just those intentions which he described on the stand on 30 April 1940

- examination ter MEER, translation English p. 13007/9,
German p. 13301/2,
exh. ter MEER 275, doc. 96, book XIV, p. 13/14 -,
viz. the intention to modernize the French dyestuff factories, to improve their operations, and to supply them for this

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purpose with new processes and experience on a large scale, in other words, as it were, to grant them priority rights on new I.G. processes in the sector of the organic chemical industry. By these measures, the profits of the dyestuff plants would have increased by at least 10%.

b) The Wiesbaden negotiations dated 21/22 November 1940.

Dr. ter MEER attended these discussions. On the first day, they were conducted exclusively by the Armistice commission (minister Dr. HEIMEN), on the second day by Dr. von SCHMITZLER. The documents introduced by the Prosecution

pres. exh. 1246, NI-6727, vol. 57, Engl.p. 77, German p. 90
" " 1247, NI-6838, " 57 Engl.p. 100, German p. 106

do not contain any evidence involving Dr. ter MEER. Apart from a list of the persons attending, there is no mention of him. But it is significant to note that on this second day of the discussions (22 November 1940) it was decided to continue the discussions without the Armistice Commission and strictly to avoid methods of procrastination.

Pres. exh. 1247, NI-6438, vol. 57, Engl.p. 106, German p. 115.

As to the harsh tone of the discussions, - particularly stressed by the Prosecution, - which allegedly created "an atmosphere of threat and intimidation", it was not in line with the tendencies of I.G. and of Dr. von SCHMITZLER. When examined on 3⁰ April 1948

-examination for MEER, translation Engl. p. 13043, German p.13371-

Dr. ter MEER stated:

"We didn't know what tone Mr. HEIMEN would use in that conference, and I can certainly say for myself and also for the other gentlemen of Farben, that we were very unpleasantly surprised about the harshness of his tone. We were very glad when we could negotiate on the next day, in the absence of the government representatives, and discuss private industrial matters."

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It was only on the basis of the results of the discussions on the second day that Dr. ter MEER instructed his collaborator Dr. LOEHR to draft the technical part of the prospective agreement.

Exh. ter MEER 275, doc. 96, book XIV, p. 13/15.

As a pattern for the draft, the agreement with the British I.C.I. concerning the setting up and the operating of a dyestuff plant in Trafford Park (England) was used; this agreement had been in existence since 1938. This very fact shows that Dr. ter MEER had no intention at all to fetter the French partners. No clauses of this type were actually included in the Francolor agreement.

c) The period up to the basic agreement reached in March 1941.

The negotiations between the parties as private industrialists were continued in Paris on 20/21 January 1941. The date had been suggested by the French group in a letter dated 10 December 1940,

exh. v. SCHWITZLER, 50, doc. 46, vol. III, page 6.

Much progress towards an agreement was reached in these negotiations.

pros. doc. 1250, NI-6949, vol. 58, Engl.p. 1, Germ. p. 1.

The fact that ter MEER attended these two meetings was mainly caused by the circumstance that in this phase of the discussions technical problems and questions of plant management were broached. But it is not evident at all that Dr. ter MEER played a major part in this connection. The Prosecution documents do not contain indications of any pressure put on the French by I.G. On the stand,

examination ter MEER, transcript p. 13043, English, 13372 German, Dr. ter MEER stated in this connection that the tone of the discussions was perfectly normal and correct: "The negotiations were conducted

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in a quite informal way, as it is customary between businessmen; everybody spoke his mind freely, and in the further course of the negotiations an extremely friendly tone established itself. Everybody asserted his interests, but it was a matter of course that he did so in a friendly tone. At the occasion of all meetings in Paris, the French partners invited us for lunch, and very friendly and interesting conversations developed during these meals."

In the meantime, it was necessary to conduct negotiations with the French government agencies in order to obtain their approval of the settlement proposed by I.G. Dr. ter MEER did not take part in these negotiations. The next meeting with the Francolor partners could not be held before 10 March 1941. In these negotiations, a basic agreement was reached. Dr. ter MEER attended this meeting. The results of this meeting were confirmed on 13 March 1941 in a conference between the contracting partners and representatives of the German Military Administration in Paris as well as of the French government.

pres. exh. 1253, NI-6950, vol. 58, p. 11 English, p. 17 German.
No sentence contained in this documents warrants the interpretation of the Prosecution that pressure was used or exploited.

Dr. ter MEER has correctly stated in the stand

- examination ter MEER, translation p. 13044 English, p.13373
German.--

that one might possibly be entitled to assert the use of pressure if I.G. had followed the example set by the French in Germany during

the years 1919 - 1920, in other words if I.G. had sent chemists in officers' uniform to the plants of the French. It is well known that at that time I.G. had only been able to extricate itself from this situation by concluding the Gallus agreement,

examination for MEER, transcript p. 13003 English, 13298 German. For MEER, on the other hand, was far from using such methods. He did not send his chemists to the prospective Francolor plants before a basic agreement was reached so that technical co-operation could start on a voluntary basis. He wanted to avoid even the appearance of pressure.

Examination for Meer, tr. p. 13044, English, 13374 German.

- d) The period from March 1941 to the signing of the agreements on 15 November 1941.

This second stage of the negotiations was mainly concerned with the drawing-up of the details of the "convention" and of the articles of association. The procedure was that I.G. undertook the leading part in the drafting of the "convention", whereas the French instructed their lawyers to undertake the leading part in the drafting of the articles of association, which were much more lengthy. These two drafts were then currently co-ordinated. Thus it was warranted that all desires were given full consideration. There can be no question of a dictation, as the procedure is termed by the Prosecution. In this connection, Dr. for MEER said on the stand:

examination for MEER, tr. p. 13010, English, 13304 German.

"If it had been otherwise, the agreement would not have been signed with my approval. Agreements of this kind which join two countries

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for the purpose of mutual co-operation must be worded in such a way that both partners are satisfied."

Further discussions took place in April, May and June 1941.

examination for MEER, tr.p. 13058 English, 13385 German.

The intervals were required in order to study the material which had been worked out in the meantime.

examination for MEER, tr. p. 13058 English, 13386 German.

In the discussions held from 21 to 24 June 1941 - which took place at this stage of the drafting of the agreements and co-ordination of the individual items - Dr. for MEER conducted the negotiations on the I.G. side, as Dr. von SCHMITZLER was sick and unable to attend. At this occasion it became even evident that the French Francolor partners did not only not object to the agreement, but that they showed dismay because of a possible hitch which might prevent the completion of the agreement. In his examination on 30 April 1948, Dr. for MEER described an incident which was typical of this attitude.

-examination for MEER, tr. p. 13011 English, 13305 German
exh. for MEER 248, doc. 13, vol. III, p. 67.

When Dr. for MEER eventually affixed his joint signature to the agreement, he was fully entitled to feel that he had co-operated in an unobjectionable and loyal mutual agreement which gave the French partners in particular a guarantee for successful co-operation over a lengthy period. Dr. for MEER confirmed this in court when examined on

30 April 1948,

examination ter MEER, tr. p. 13010/11 English, 13304 German.

e) The implementation of the agreement.

Even before the conclusion of the agreement, I.G. and ter MEER sincerely intended to assist the new company. As early as in March 1941, a short time after a basic agreement on the new production plant had been reached, ter MEER transferred some of his best dyestuff experts to Franco. It was their task to co-operate with the experts of the prospective Francolor plants and jointly to explore the ways and means by which I.G. could provide the plants with an increased number of orders.

examination ter MEER, tr. p. 13036 English, p. 13364 German.

This resulted in a large purchase of dyestuffs by I.G.,

exh. v. SCHMITZLER 55, doc. 51, book III, p. 29
" v. SCHMITZLER 56, " 52, " III, p. 39,

which lent a new impetus to the plants then hampered by many difficulties. The close co-operation between I.G. and the Francolor plants, which started after the agreement became effective, took place in the same spirit of friendly understanding. It must be kept in mind that the management of the business including that of the plants was in French hands exclusively. The so-called technical Commission consisted of an equal number of French and German representatives. It acted in an advisory capacity only and was presided over by the President of Francolor, Dr. FROSSARD. In consequence, only those

proposals were carried out in the technical sector which had been approved of by the French management. The activities of the German experts including those of the defendants ter MEER and AMEROS were merely advisory. The meetings of the Technical Commission took place in an atmosphere of friendly understanding.

examination ter MEER, tr.p. 13037, 13364/65
exh. AMEROS 172, doc. 901, book VII, p. 1 - 9
" ter MEER 275, doc. 96, book XIV, p. 15 -16

German specialists frequently visited the Francolor plants in order to transmit the know-how of the I.G. to Francolor. Vice-versa, Francolor specialists visited the German plants in order to gain experience on the spot.

exh. ter MEER 247, doc. 72, book III, p. 65/66
" " " 275, " 96, " XIV, p. 16/17.

Valuable machinery was taken out of I.G. plants and installed in the new company, e.g. a modern installation for the production of Formol or formaldehyde, an intermediate product for synthetic materials (Kunststoffe).

exh. AMEROS 172, doc. 801, book VIII, . . 3 - 4.

Spare parts no longer available in Franco, new synthetic materials and other parts were sent to the Francolor plants by I.G. An exchange of experience took place in patent matters.

exh. ter MEER 247, doc. 72, book III, p. 64-66
" " " 275, " 96 " XIV, p. 15-18.

After the conclusion of the Francolor agreement, the output of the French plants merged in Francolor increased considerably, particularly in the fields of auxiliary products for textiles, intermediate products, tanning materials, chemicals for

the rubber industry, and glues.

exh. for MEER 279, doc. 160, book XIV, suppl. II p. 36
deposition for MEER, tr.p. 13077/8 English, 13365/66 German.

f) The alleged Strengthening of the German war potential,

It is not true, and it has not been proved, that I.G. dismantled
(constructed?) (original: ausgebaut)

special installations in France and removed them to Germany.

Francolor had been formed as an enterprise for the production of
dyestuffs and this remained its main line throughout until the end
of the war. These dyestuffs were sold in France and in those
countries to which Francolor exported, such as Spain, Portugal,
Belgium. At no time, more than 5% of the dyestuff output of
Francolor was exported to Germany.

exh. v. SCHMITZLER 86, doc. 82, book V, p. 12.

However, in 1942 there arose difficulties hampering the production
of Francolor. The fact that the German regulations of rationing
and control were introduced in France as well, it became quite
impossible to supply coal, raw materials, spare parts etc. for
more peace time production. The Francolor plants were in danger
of being closed down. For this reason, and with the express
approval of the French Francolor management, a program for so
called direct and indirect Wehrmacht requirements was set up.
But this never involved gunpowder, explosives, not to mention
poison gas. The only direct German Wehrmacht requirements
covered were preliminary products of a completely innocuous
character. In 1942, they amounted to

less than 5% of the total Francolor output. The so-called indirect Wehrmacht requirements consisted of mere peace time products such as chemicals for rubber production, gum-lace, synthetic materials and glues. By these means, Francolor was provided with a kind of economic alibi vis-a-vis the German occupation authorities,

examination ter MEER, tr.p. 13037/9 English, 13366/68 German
" AMEROS " " 8063 English, 8136 German.

An installation for the production of high explosives in the plant St. Clair du Rhone, which was already in existence, never started operations. The fact that the entire production covering these so called direct and indirect Wehrmacht requirements did not exceed a very modest scope is also proved by the total Francolor exports to Germany in 1942 and 1943. Including dyestuffs and other products they amounted to 13% in 1942 and 18% in 1943.

exh. ter MEER 279, doc. 160, book XIV, suppl. II, p. 36

g) Transfer of French workers to Germany.

The charge that I.G. or the defendant ter MEER moved French skilled workers from the Francolor plants to Germany has been refuted by the following documents:

exh. AMEROS	181	doc. 6 A, 810,	book VIII,	p. 33
	182	" 6 A 811	" VIII	p. 41
	183	" 6 A 812	" VIII	p. 44
	184	" 6 A 813	" VIII	p. 45
	185	" 6 A 814	" VIII	p. 47
	186	" 6 A 815	" VIII	p. 49

exh. AMEROS	187, doc. 6 A 816, book VIII, p. 54
"	188, " 6 A 817, " VIII, p. 56
"	189, " 6 A 818, " VIII, p. 58
"	190, " 6 A 819, " VIII, p. 61

In the beginning, 150 young French skilled workers belonging to the Francolor plants went voluntarily to Germany; in doing so, they followed a directive given by the French government agencies based on an agreement concluded between France and Germany, the so-called Relève. The purpose was to obtain by way of this exchange the release of married French prisoners of war. Later on, the French government issued a decree concerning general registration (Erfassung) of French workers for commitment in Germany. Because of the fact that the capacity of the Francolor plants was well covered by orders, only few of their workers were affected by this measure; by request of Mr. FROSSARD, they were then employed by I.G. Thus, they were able to remain in their previous trades and they found facilities of social welfare in I.G. which they would not have found in a different employment.

Examination ter MEER, tr. p. 13048 English, 13377 German.
In consequence, I.G. far from exploiting the position, did on her part ... whatever could be done in order to render it less harsh.

The affidavit of Dr. LOEHR

exh. ter MEER 279, doc. 160, book XIV, suppl. II p. 36
reveals that if the war conditions then prevailing are taken into consideration, Francolor enjoyed very favorable conditions of employment. The number of persons employed in 1938 - which in 1941 had been reduced by 4,250 to approximately 3,500 because of the drafts to the armed forces and ensuing captivity- remained static up to 1944 and amounted to

approximately 3,100 persons, i.e., 73% of the 1938 figure. Not a single German plant enjoyed such favorable conditions at that time.

II. Alsace - Lorraine.

- a) As far as the acquisition of the oxygen plants in Alsace-Lorraine by I.G. is concerned, the defendant Dr. ter MEER had nothing to do with this matter. This acquisition was effected by the Department Chemicals of I.G. and the Deutsche Linde Gesellschaft. When ter MEER was cross-examined, the Prosecution confronted him with the record of the TEA meeting held on 13 November 1940,

pros. exh. 2192, NI-4860, submitted later, which reveals that at that meeting an amount of RM 3,000,000.--- was granted for the purpose of extending existing oxygen plants. The grant of these funds had nothing to do with the acquisition of the oxygen plants in Alsace - Lorraine.

This was only a technical decision; it did not cause nor implement the acquisition made by Dr. ter MEER on the stand to the effect that he had nothing to do with the acquisition,

examination ter MEER, tr.p. 13051 English, 13379 German.

- b) As far as the two Muehlhausen plants are concerned, the Prosecution has not charged I.G. with the acquisition of Muehlhausen-Dornach.

The plant Muehlhausen-Werd had been seized by the Chief of the Civil Administration, a German authority. It was administered

by a trustee (Kommissar) appointed by the state. On 8 May 1941, I.G. concluded a lease with the trustee. Its purpose was to enable the salaried employees and the workers to maintain their employment. The lease provided for the purchase of the plant by I.G. at a later date. The purchase was effectuated in June 1943, the price to be paid to the German Civil Administration. There was no possibility in fact or in law to transmit the price to the former French owners. For this reason, I.G. reached an oral agreement with the previous owners of the plant, viz. M. FROSSARD and M. DUCHEMIN, to the effect that

Trial Brief ter MEER

in the framework of the relations between I.G. and the previous owners, viz. the Establishment KUHLMANN, the purchase should not be considered final, but that a final settlement should be made after the peace treaty by way of a voluntary agreement between both parties. In addition, the purchase had been approved by the previous owners for whom it was of particular interest that it was the I.G. which bought the plant, because the danger of arbitrary measures of the German authorities was thus eliminated. In consequence, I.G. managed the plant only in the capacity of a trustee and kept it going throughout the war, even incurring financial losses; I.G. did not consider itself the final owner. These facts are proved by the affidavit Dr. SCHNELL,

exh. ter MEER 249, doc. 74, book III, p. 71-77.

As to Dr. ter MEER, he was the technical expert in the dyestuff field and thus not involved in the legal and commercial aspects of this purchase. The negotiations were conducted by commercial executives and lawyers.

It is admitted that Dr. ter MEER knew most of these measures, but he was entitled to assume that they were within the law. No legal objections were ever reported to him or brought to his notice otherwise. I refer to my expositions concerning the case of Poland.

In consequence, in the case of France, too, no proof of a criminal offense committed by the defendant for MEER has been proven; this applies both to Francolor and to the plants in Alsace-Lorraine.

CERTIFICATE OF TRANSLATION

16 June 1946

I, Ernst SCHAEFER, Civ.No. ETO 20 165, hereby certify that I
am a duly appointed translator for the German and English
languages and that the above is a true and correct translation
of the original document.

Ernst SCHAEFER
Civ.No. 20 165.

Count III

- A. Count III of the indictment accuses the defendants of crimes against humanity consisting in "enslavement and mass murder". In this connection I want to refer to the basic statements concerning this count, which other members of the defense have submitted within the frame of the defense as a whole.

Within the IG, Dr. ter MEER had nothing to do with labor questions. Such questions did not belong to his sphere of duties as TEA chairman and as Spartenleiter. I beg to refer to my statements concerning the positions held by ter MEER in the IG (cf. pages 16, 24). Besides, Dr. ter MEER has treated labor policy and methods of the IG in his affidavit of 30 April 1947, exh.ter MEER 237, doc. 75, book III pages 78 ssq. (NI 5182).

- B. Count III of the indictment accuses the defendants of having employed prisoners of Auschwitz concentration camp during the construction of the Auschwitz IG plant. The prosecution claims that the concentration camp prisoners working there have been treated in an inhuman way and were sent, many of them, after ruthless exploitation of their last physical strength, to Birkenau concentration camp in order to be exterminated there.

The defendant ter MEER is accused, in this connection, to have agreed to the selection of Auschwitz as construction site, because cheap labor from the concentration camp could be employed there.

I. After the outbreak of war, discussions concerning further expansion of Buna manufacture took place immediately, as Germany was, in practice, shut off from natural rubber supplies. It was intended to construct a third Buna plant. The IG suggested Rattwitz near Breslau, and in fact construction was begun there at the beginning of 1940. Berlin authorities, however, suddenly stopped construction in summer 1940, after the successful campaign in the West. In October 1940 further conferences took place concerning further expansion of Buna manufacture by IG. For various reasons, the IG did not want the new Buna plant to be situated in the East.

Examination ter MEER, transcr. Engl. page 7140/41,
German page 7196

Examination KRAUCH, transcr. Engl. page 5391/92,
German page 5422

Above all, the IG wanted to erect the third plant on the Rhine, between Ludwigshafen and Oppau, as the new Reppe method was ready to be used in Ludwigshafen. This suggestion submitted by the IG was agreed on.

However, before the negotiations concerning the third Buna plant between Ludwigshafen and Oppau on the Rhine, were concluded, the IG was ordered to construct a fourth plant in the East, as the plan of the IG to expand the Huels plant had not been adopted. This is confirmed by the following defense documents:

Exh. Ambros	75	Doc.	OA 306	book	III A,	page	15
"	"	71	"	OA 312	"	III A,	page 30
"	"	91	"	OA 319	"	III A,	page 46

and the prosecution documents:

Exh.	1413	NI-11112,	book	72,	engl. page	23,	germ. page	40
"	1414	NI-11113,	"	72,	"	"	"	49

and above all by:

Pros.Exh.1408, NI- 11781, book 72, Engl.page 1
German page 1

the urgent letter of the Reich Ministry of Economy dated 8 November 1940, which shows that a conference took place at the Ministry on 2 November 1940 which led to the decision to expand the Buna plant by 150 000 tons per year, and to achieve this expansion by way of two plants, viz. the third Buna plant in Ludwigshafen with an output capacity of 25 000 tons a year, and an Eastern plant still to be erected, the fourth Buna plant in Silesia, with the same output capacity of 25 000 tons per year. The construction of both those plants, the third and the fourth Buna plant of the IG, was, without any doubt, ordered by the Reich Ministry of Economy and the Reich Office for Economic Expansion, both being Supreme Reich Offices.

Pros.Exh.1408, Doc. NI-11781, book 72 Engl.p.1,
Germ.p. 1
" " 1413, Doc. NI-11112, book 72, Engl.p.23
Germ.p.40
" " 2199, Doc. NI-11938, book 93, Engl.p.1
Germ.p.1
" " 2202, Doc. NI-11787, book 93, Engl.page 8
Germ.page 8

This order had to be carried out by the IG. Neither the defendant ter MEER, nor the defendant AMBROS, nor any other office of the IG could refuse to carry out such an official order. The assumption of the Trial Brief (section 159), ~~that~~ the IG had constructed those plants, particularly those in Auschwitz, voluntarily on their own initiative, is quite untrue.

Pros.Exh. 1408, NI-11781, book 72 Engl.page 1
 Germ.page 1
 " " 1413, NI-11112, " 72 Engl.page 23,
 Germ.page 40
 " " 2199, NI-11938, " 93 Engl.page 1-3
 Germ.page 1-3
 " " 2202, NI-11787, " 93 Engl.page 8
 Germ.page 8

If in exh. 1408 it is stated in the second paragraph that the IG "had declared itself prepared in principle to erect these plants", this does not mean in any way that the IG erected the fourth Buna plant voluntarily and on their own initiative; it only means that they obeyed the official order issued to them, for no other reason than because they had to obey it. The company was furthermore given the task of settling the question of the site in Silesia, apart from the question of financing the project.

Various sites were examined as to their suitability for the erection of a Buna plant, amongst others once more the locality Rattwitz near Breslau. It was the Mineraloelbaugesellschaft which for the first time mentioned the region near Auschwitz. The examination showed, that in this locality the general economic conditions were particularly favorable for the planned works. It combined most of the necessary requirements: the easy accessibility of coal, lime, and salt, a situation on a river which had enough water even in summer to be used for the production of power and to receive the waste-water, a very favorable situation as far as transport was concerned (railway, water canal, Autobahn,) and a wide level building site with a firm building foundation.

Exh.Ambros 77, Doc.OA 310, book III A page 24
 " " 89, " " 325, " " " 60-70
 " " 93, " " 326, " " " 72
 Pros.Exh.1414, NI-11113, book 72 engl.page 27
 Germ.page 49
 Examination ter MEER Prot. Engl.page 7143, Germ.page 7199

As Auschwitz had thus to be regarded as an extremely suitable locality for a large chemical plant, this place was suggested as the site for the fourth Buna factory to the Reich Office for Economic Expansion during a conference held on 6 February 1941. In the course of this conference the Gobechem, Dr. KRAUCH, finally dropped the plan of building the fourth Buna factory in Norway, and he declared that the Reich Office for Economic Expansion would forthwith drop the Norway project and decide on Auschwitz as the site for the erection of the fourth Buna plant.

Pros. Exh. 1414 NI-11113, book 72, Engl. page 27
 Germ. page 47
 (second paragraph from the end)

The representatives of the IG who attended this conference were the defendants ter MEER and AMBROS. The memorandum to the files was made by ter MEER on 10 February 1941, i.e. four days after the conference. It is thus a document of the period, which must be considered as being of a greater probative value.

II. The fact that there was a concentration camp near Auschwitz did not play any part in the decision that Auschwitz should be selected as the site.

Examination ter MEER Prot. Engl. page 7146/47 u. 7195
 Germ. page 7203/4, 7259

Examination KRAUCH Prot. Engl. page 5219/20
 Germ. page 5248

Examination AMBROS Prot. Engl. page 7831
 Germ. page 7905

Examination BUETEFISCH Prot. Engl. page 8863
 Germ. page 8851

Exh. AMBROS	80	Doc. OA	319,	book IIIA,	page	33
" "	81	" "	314,	" "	"	36
" "	82	" "	315,	" "	"	38
" "	83	" "	316,	" "	"	40
" "	84	" "	317,	" "	"	42
" "	90	" "	318,	" "	"	45

TRIAL BRIEF TER MEER

This was quite unknown to the defendant ter Meer when the site was selected, viz. on 6 February 1941. (Examination ter Meer, transcript Engl. p. 7148/49 Germ. p.7205

He first knew about this fact after the Reich Ministry of Economy and the Reich Office for Economic Expansion (Gebochen) had definitively ordered the construction of the Auschwitz plant.

Interrogation ter Meer, transc. E.p.7147/49, G.p.7205
Pres. Exh. 1413, Doc. NI-11112 Back 72, E.p.23, G.p.40
" " 1414, " NI-11113 " 72, E.p.27, G.p.47

This argumentation of the defendant ter Meer is substantiated by the fact that in neither of his two file notes of 10 February 1941, pres. exh. 1413 and 1414 cf. above, concerning the discussions at the Reich Office for Economic Expansion and at the Reich Ministry of Economy, there is the slightest allusion to be found to Auschwitz concentration camp and to the possibility of using inmates of this camp as workers. This is rather important, as ter Meer discusses at length in his file note (exh. 1414) the problem of the procurement of labor for the new plant. It certainly is out of question that ter Meer would not have discussed the problem of the utilization of concentration camp inmates in this connection, if such a utilization had been considered at the time. On the contrary, the contents of exh. 1414 show quite clearly that ter Meer had thought of quite a different solution of the labor problem. This is proved by the following sentences of the ter Meer file note:

TRIAL BRIEF TER MEER

"The only difficulty arising at Auschwitz was the procurement of suitable labor; the execution of an extensive settlement program, in order to settle German workers in homes at Auschwitz would be unavoidable." (Tros.vol. 72, Engl.p.28, Germ.p.49);

No evidence has been submitted that ter Meer had a thorough knowledge of the local conditions at Auschwitz. If Director Josenhans, a representative of the firm "Schlesien-Benzin" stated at a conference held at Ludwigshafen on 18 January 1941 - in which ter Meer did not participate and the minutes of which he did not receive - that a camp for Poles and Jews was being erected in the immediate proximity of Auschwitz (Exh.1411, doc. BI-11784, vol. 72, Engl. p.14, Germ.p.22) then this was a detail which was quite unimportant at that time, and which only came to the knowledge of those people who participated in this conference, thus not to that of Dr. ter Meer. It is significant that the camp which was being constructed is not mentioned as a possible source of labor, but only in connection with a geographical description of Auschwitz and surroundings.

Tros. Exh.1411, Doc. NI-11784, Book 72, E.p.14, G.p.22
Nor was the defendant ter Meer informed of the report submitted in draft form only by chief engineer Santo of Ludwigshafen on 10 February 1941.

Tros. Exh. 1412, Doc. NI-11785, Book 72, E.p.18, G.p.29
Interrogation ter Meer trans. E.p. 7147/49, G.p. 7204/5

The Santo report thus only shows that one or the other of the numerous persons who participated in some way in the selection of the site for the Silesian plant whose construction had been ordered, may have known about the concentration camp. It is shown unambiguously by ter MEER's 2 file notes of 10 February 1941, pros.exh. 1413 and 1414 cf. above, that he was not among those persons. He describes at length the advantages of the Auschwitz site, but does not mention the concentration camp at all and suggests a definite solution of the labor problem by means of a settlement policy.

The defendant BUETEFISCH, who mentions in his affidavit submitted by the Prosecution Exh. 1416, Doc. NI-4182
book 72 English page 36
German page 63

that the existence of concentration camp inmates at Auschwitz was one of the reasons given by AMBROS for the selection of Auschwitz, has deposed in his examination in court that, as a matter of fact, this did not have any importance when selecting the site of the new plant

Examination BUETEFISCH Prot.engl.page 8862/63, 8911
German page 8851, 9003

Likewise, the defendant AMBROS has corrected his statements made in the affidavit given to the prosecution to the effect that the existence of a concentration camp did not have anything to do with the selection of Auschwitz as site of the Buna plant.

If we compare the value of these affidavits with the two file notes of ter MEER dated 10 February 1941, it must be considered decisive that these file notes are contemporary documents and thus have a greater probative value than the affidavits made many years later from memory, without documents, by affiants in custody.

This statement of ter MEER is not contradicted by his statements in his examination on 13 April 1947

Exh.ter MEER 237, Doc.75, book III, page 78 ff
(NI-5182),

listed in section 23 of this exhibit. If it says here:
"The existence of Auschwitz concentration camp as a source of labor may have further contributed to the decision to select Auschwitz", then this is, in the first instance, as the word "may" shows, a general and not a specified statement, a statement made by ter MEER many years later and not on behalf of himself, but a very general one, as he did not know or could not know whether the existence of the concentration camp was of importance to any other persons. At any rate, this passage must be read in connection with the sentence written a few lines previously: "I am perfectly convinced that the site in the vicinity of Auschwitz was selected because of the coal, electricity, lime and salt supply, as well as because of the good water and sewer systems. In my opinion, the existence of Auschwitz concentration camp was a mere co-incidence. If I use the word "co-incidence" I mean that I remember that our decision to erect the new plant in Auschwitz was not based on the fact that a concentration camp existed there".

Thus it is proved without any doubt that, as far as ter MEER is concerned, the existence of the concentration camp was in no way decisive, when he selected the Auschwitz site. Concerning a further statement of ter MEER in this connection (Exh. ter MEER 237), I beg to refer to his examination in the afternoon of 16 February 1948 (transcr. Engl. page 7148, German page 7204.

Nor can the defendant ter MEER be charged with the compulsory expulsion of the Jews from Auschwitz by Reich Offices. The construction of the Auschwitz plant had not the least influence on this. The entire Auschwitz area had been confiscated by the Reich and was placed under the authority of the Reichsfuehrer SS, Himmler, in his capacity as Reich Commissioner for the Strengthening of Germandom in the East.

Exh. Ambros 200 Doc. OA 328, book III B page 6/8/9
There had already existed a previous plan, quite independent from the construction project of the IG, to evacuate the entire Polish and Jewish population of Auschwitz, not later than 1 April 1942.

Exh. Ambros 77, Doc. OA 31e, book III A page 25
Pros. Exh. 1415, Doc. NI-11782, book 72, Engl. page 34
German page 60.

This measure was connected with the germanization program of the Nazis and was carried out under HITLER's direction; it was a political measure on which the IG could not exert any influence whatsoever.

On the contrary, the result of the construction of the Auschwitz plant by the IG was a certain mitigation of the evacuation program planned at first.

The urgent need of construction workers for the new plant compelled the local authorities to let the Polish laborers living in Auschwitz and vicinity stay in their old residence.

Exh. Ambros 85, Doc. OA 32e, book III, page 48.

III. Just as the construction of the Auschwitz IG plant, the utilization of concentration camp inmates was ordered by Supreme Reich Offices. The compulsory employment of workers, including prisoners and convicts, was a part of the wartime program of the Nazi government, which thus tried to remedy the wartime labor shortage. The individual enterprises to which this kind of labor was allocated, were compelled to utilize them. A refusal would have been considered as sabotage and would have been severely punished.

Def. Exh. 263, Doc. Wi.R.69, vol. III
Regulation of Economy page 23

Def. Exh. 202, Doc. Wi.R.11, vol. I
Regulation of Economy page 18

Def. Exh. 205, Doc. Wi.R.14, vol. I
Regulation of Economy page 28 (sec. 3b)

The IG was placed in this dilemma, which has explicitly been recognized as such by the Flick Judgement of the American Military Tribunal. Moreover, the Auschwitz plant was an enterprise of the highest importance for the war, whose construction was not based on private initiative of the IG, but had been ordered by the Supreme Reich authorities. Thus, this construction was given the highest priority rating.

Pros. Exh. 2199, Doc. NI-11938, book 93,
Engl. page 1,
German page 1
Examination Ambros Prot. Engl. page 7853,
German page 7930

The result was that such an enterprise was given special consideration, as far as the allocation of prisoners was concerned. For this reason, GOERING sent an order to HIMMLER on 18 February 1941 to the effect that as many skilled construction workers and auxiliary construction workers as possible from Auschwitz concentration camp should be allocated to the new plant

Prosecution Exh. 1417, doc. NI-1240, book 72 English p. 39
German p. 66.

According to this GOERING decree, HIMMLER ordered on 26 February 1941 that the Polish population fit for labor should remain in Auschwitz. At the same time the Inspector of the concentration camp and the chief of the Economic and Administrative Main Office were ordered to help the construction plans of the I.G. in Auschwitz to the greatest possible extent by allocating concentration camp inmates.

Prosecution Exh. 1422, doc. NI-11036, book 72, English p. 71
German p. 114.

Ter MEER had no influence whatever on the promulgation of the GOERING decree nor on the HIMMLER order. They were official measures which were not taken in the interest of the individual firms, but were part of the official planning and direction of the German war economy. The letter which the Plenipotentiary for the Four Year Plan (Goebbels) sent to the I.G. on 4 March 1941, and which informed the I.G. of the allocation of prisoners as ordered by GOERING, thus confronted the I.G. with a fait accompli which it could not change, and which did not leave the I.G. any other way out but that of utilizing the allocated concentration camp inmates. The possibility of a refusal assumed by the prosecution did not exist, according to the GOERING decree of 18 February 1941.

Interrogation KRAUCH, translation Engl.p. 5221/22 Germ.p. 5252

IV. The procurement of labor for the individual plants, and their welfare, were no part at all of the duties of the defendant ter MEER in his capacity as TFA chairman and Spartenleiter. This was rather the sphere of work of the local plant managers in cooperative with the competent State Labor Offices (cf. the detailed arguments of attorney-at-law Dr. Helmuth DIX in the Trial for the defendant SCHNEIDER).

The TFA had nothing whatever to do, as a matter of principle, with labor problems.

Pres. Exh. 1876, Doc. NI-21510

Exh. ter MEER 237, Doc. 75, book III, page 78

(page 5 of the doc.) NI-5182

Exam. ter MEER, rec. Engl. p. 7128, German p. 7182

There was only a very loose and indirect connection between TFA and such problems. When new plants were erected, the "credits" proposed by the TFA to the Vorstand also included, as a matter of course, buildings for the workers employed in those plants, such as, e.g., lodgings, barracks, etc.

Exh. ter MEER 237, Doc. 75, book III, page 78
(page 5 of the doc.), NI-5182.

Moreover, Dr. STEUSS had been used to submit, since about 1942, statistics concerning the personnel of the larger IG plants, in order to draw the TFA's attention to the possibility of spending money for new constructions. In other words, he wanted to show within what time limits the new constructions agreed upon could be expected to be carried out, a fact which depended, of course, on the number and kind of workers.

In his capacity as head of the TEA, the defendant ter MEER thus had no influence on the utilization of prisoners at Auschwitz. Neither did he have to take basic decisions as to the extent in which, and the purpose for which, workers, particularly prisoners, should be employed at Auschwitz, nor did he have to care for the welfare of those workers. This was the task of the local work management, which was not supervised in this respect by the TEA, whose duties were entirely different.

Pres.Exh. 1876, NI-12610.

Thus the defendant ter MEER did not know in detail the development of the employment of workers and prisoners in Auschwitz, particularly since the co-defendant Ambros, according to the statement of the witness Struss (Exh.1876), only very rarely, two or three times in all, discussed problems of the Auschwitz construction site in the TEA. The so-called construction reports were, it is true, sent to the TEA Office and were filed by Dr. Struss in this office. However, as Dr. Struss has stated in the witness stand on 5 May 1948, Dr. ter MEER did not read them, since this did not belong to his sphere of duties.

Pres.Exh.1876, Doc. NI-12610
Examination Struss, Rec.Engl.p.13572/73, German p.13768.

It has been stated, when discussing ter MEER's official jobs, that labor problems never did come within his duties as *Spartenleiter*.

In his capacity as head of the TEA, the defendant ter MEER thus had no influence on the utilization of prisoners at Auschwitz. Neither did he have to take basic decisions as to the extent in which, and the purpose for which, workers, particularly prisoners, should be employed at Auschwitz, nor did he have to care for the welfare of those workers. This was the task of the local work management, which was not supervised in this respect by the TEA, whose duties were entirely different.

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Pros.Exh.1876, Doc. NI-12610
Examination Struss, Rec.Engl.p.13572/73, German p.13768.

It has been stated, when discussing ter MEER's official jobs, that labor problems never did come within his duties as *Arbeitsleiter*.

V. Nor did the two visits of the defendant for MEER in Auschwitz in October 1941 and in November 1942 enable him to gain a clearer insight into the problem of the utilization of prisoners in Auschwitz.

Examination for Meer Rec.Engl.p.7150/53, German p.7206.

Both visits were very short, each time a few hours only, and accordingly could give but a superficial impression of the conditions in Auschwitz. The defendant for MEER saw in Auschwitz a well-managed large-scale construction site, where no defects could be detected.

Examination for Meer Rec. Engl.p.7156/64, German p.7214
Engl.p.7150/53, German p.7208.

The prisoners and their physical condition did not make a bad impression on the defendant for MEER, and he did not observe or hear of any abuses.

Examination for MEER, Rec. Engl. p.7157/58, German p.7215.

A casual short visit at Auschwitz concentration camp, following the defendant's first visit to Auschwitz, did not give him any impressions which led him to suspect any abuses, far less killings. Quite in the contrary, the facilities shown to the defendant even surprised him by their judicial planning and good condition.

Examination for MEER, Rec.Engl.p.5159/61, German p.7217.

This statement of the defendant for MEER is quite credible. It is convincingly supplemented and confirmed by the deposition of the witness Dr. Kuonch, formerly physician at Auschwitz concentration camp, who stated that the SS of the Auschwitz camp tried to hide the horrible condition of the inmates behind a facade of cleanliness, order, and welfare intended to dupe the world at large.

The SS even succeeded in deceiving Commissions of the International Red Cross visiting this camp in order to observe local conditions.

Examination Dr. Muench, Rec. Engl. p. 14322/25, Germ. p. 14661/81.
Nor did Dr. MEER, when visiting the Monowitz camp on the occasion of his second visit at Auschwitz in November 1942, observe anything which might have warranted a conclusion that the inmates were being abused.

Examination Dr. Meer, Rec. Engl. p. 7164, Germ. p. 7222.
Nor did Dr. MEER, prior to the end of the war, ever hear anything at all about the mass killings of Jewish prisoners unfit for work at Auschwitz concentration camp.

Examination Dr. MEER, Rec. Engl. p. 7166/68, German p. 7226.
The defendant did not learn anything about mass crimes either. He did not even hear rumors about them. The two visits of Dr. MEER to Auschwitz and to Monowitz concentration camp are at the same time a valid proof of the fact that the defendant was not informed, at least not before November 1942, of any atrocities in concentration camps. If this had been the case, Dr. MEER would not have paid any visits. The witness Struss has stated, in a very vague form, it is true, in his affidavit of 21 November 1947 (Proc. Exh. 1876, Doc. NI-12610) that he might possibly have told the defendant Dr. MEER rumors concerning atrocities in Auschwitz concentration camp.

In his cross-examination of 1 May 1948 Dr. Struss, on the other hand, stated voluntarily that he now remembered quite clearly not having talked with the defendant ter Meer about atrocities in Auschwitz or about rumors of this nature.

Examination Struss Rec.Engl.p.13568, German p.33765.

Furthermore, the witness Struss maintained in his affidavit that he had talked with other persons apart from ter Meer about the cremations; he designated these persons by name, viz. Dr. Loor, Ambros and Janoth. Actually the witness talked with none of these afore-mentioned persons, as is proved irrefutably by their examinations and affidavits.

Exh.ter Meer 276, Doc.97, Book XIV, page 22
 " " " 238, " 77, " XIV, " 20
 " " " 277, " 98, " XIV, " 24

Examination Ambros, Rec.Engl.p.8047, German p.6122
 " ter Meer " " " 7194/95, Germ.p.7253/55.

It must be mentioned at the end of this part that Dr. ter Meer was a member of a military technical staff in North Italy from 15 November 1943 up to the end of the war. When he took over these activities he terminated his work for the I.G. as a whole. At any rate, he had nothing further to do with Auschwitz after September 1943.

Ad Count V:

1. The Prosecution has furnished no proof showing that the factual elements constituting a conspiracy are given. It has not been proved either that all the defendants, or that a part of them conspired. In particular, there has been nothing to show that Dr. MEER participated in such a conspiracy.

2. Not the slightest proof has been furnished for the fact that in the case of Dr. ter MEER the mental elements constituting a conspiracy are given. With regard to his ignorance of an aggressive war, I refer to my expositions ad Count I under a) and b) (page 25 and ssq.) My expositions concerning Dr. ter MEER's relations with the NSDAP (page 3 and following) prove clearly that Dr. ter MEER would have taken up a negative attitude towards a conspiracy of that kind, if it had been suggested to him in any form whatsoever.

The above expositions show that Dr. ter MEER is not guilty of any charges raised against him.

Nuernberg, 1 June 1948

Dr. Erich Borndt
Karl Bornemann
Defense Counsels.

CERTIFICATE OF TRANSLATION

17 June 1948

I, Julia MEER, ETO 20 185, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Julia MEER
ETO 20 185.

Case 6
Defense

TRIBUNAL VI

CASE VI

Closing - Brief

for

Dr. HEINRICH OSTER

Nurnberg, 27 May 1948

submitted by
the defense counsel

HELMUTH HENZE
Attorney-at-law.

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Closing Brief OSTER

As requested by the Tribunal I am, in this closing brief, submitting evidence in support of my client Dr. Heinrich OSTER to counter the evidence brought against him by the prosecution.

I am leaving the cases which are concerned with groups of questions which do not concern Herr OSTER principally to those of my colleagues whose clients are more affected by them to deal with them in full detail. In such cases I shall confine myself to making a critical survey of the part which my client has taken in such activities.

CRIMES AGAINST PEACE

I. The prosecution accuses the defendant of having brought about an alliance between the I.G. Farben and the Party. The only documents submitted as evidence for the connection of Dr. OSTER with the Party are Doc. NI 9756, Exh. 312, Book 11, English page 167 "Review of the positions held by Dr. OSTER" and his affidavit NI 5166, Exh. 313, Book 11 Engl. page 170. These documents prove that Herr OSTER was a member of the NSDAP since 1940 and from 1935 to 1939 a contributing member of the National Socialist air-corps.

To the question of party-membership I have submitted an affidavit by an employee of the Nitrogen-Syndicate Fritz WERTHER, Doc. OSTER 10, Exh. 10, Book I, page 28. This affidavit states that the chairman of the Shop Stewards' Council of the Nitrogen Syndicate had informed him as far back as the end of the 'thirties, that he had suggested to the Party-authorities to make Herr OSTER a member of the Party. The above mentioned documents submitted by the prosecution prove that Dr. OSTER never held any office in the Party. When personally examined, transcript German page 10814.

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English page 10670/71, Dr. OSTER gives his reasons why he accepted the invitation to join the Party. His reasons were that, if he had refused to join, he would have had to count upon having to relinquish his post as director of the Nitrogen Syndicate. Actually, it had already been his desire some time before to retire from his office and therewith give up his position. However, in 1940, he thought it more desirable, in the interest of the continuation of the international Nitrogen Agreement and for the sake of the possibility of helping foreign business-friends, to stay in office and do as he had been requested to.

The manager of the Nitrogen Syndicate Otto W. H. L. states in his affidavit, OSTER Doc. 5 A, Exh. 5, Book I, page 17a "that Dr. OSTER became a member of the Party in the interest of the enterprise, the stockholders of the company and the whole office-personnel." Also Affidavit ROETGER, document OSTER 6, Exh. 6, Book I page 18.

That Dr. OSTER was never closely linked with the Party is stated by the former employee of the Nitrogen Syndicate, Dr. SCHUELE in Doc. OSTER 13, Exh. 13, Book I, page 35, who says among other things that Dr. OSTER, as a Betriebsfuehrer of the Nitrogen Syndicate, never made the suggestion to his subordinates to join the NSDAP. This is also confirmed by the affiant W. H. L. in his affidavit Doc. OSTER 5, A, Exh. 5 (Book I, page 17a). In Doc. OSTER 11, Exh. 11, Book I, p. 30, the former employee of the Nitrogen Syndicate, Dr. ASSMANN states that Dr. OSTER did not arrange for regular plant assembly meetings and other similar occasions as ordered by the Party and gave them much less the character of a National Socialist demonstration than that of a social gathering.

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In Doc. OSTER 12, Exh. 12, the former employee of the Nitrogen Syndicate, Eduard HINTZE, who was arrested by the Gestapo and sentenced by a Special Court to a year's imprisonment for his anti-national socialist attitude, states that Dr. OSTER helped his family during this critical time. Hans SCHMITZ, gives further examples of assistance to persons who criticized the Third Reich in OSTER Doc. 9, Exhibit 9, Book I, page 26.

The former employee of the I.G. Farben, Dr. Ernst BENN confirms in his affidavit Doc. OSTER 5, Exh. 4, Book I, page 14 that Dr. OSTER had assisted persons who were persecuted because of the racial laws of National Socialism and had kept them on as employees of the firm.

Further statements about these questions are contained in documents

Affidavit SCHIKORA, Doc. OSTER 4, Exh. 3, Book I, p. 11

"	BENN	"	"	5	"	4	"	I,	"	14
"	SCHMIDT	"	"	7	"	7	"	I,	"	20
"	FRANKE	"	"	8	"	8	"	I,	"	23

About this joining the above mentioned National Socialist groups Dr. OSTER says in his direct examination, transcript German p. 10615-10616, English p. 10671, that he had become a member of the German Airsports-Associations because the son of his chauffeur had asked him to do so, in order to help the aims of this association, i.e. to interest young people in gliding. This association was later on incorporated into the NS-air-corps.

He became a contributing member of the Mounted-SS Sturm in Zehlendorf, a suburb of Berlin, on the request of an employee of the Syndicate who was a member himself. All he did was to pay the regular contributions.

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He gives as further reasons for becoming a member of these two associations in these direct examinations (Transcript German p.10815, English p.10672) that he thought it better for young people to pursue their interest in sports rather than be politically active - at least during the HITLER era.

The prosecution has not claimed that Dr. OSTER gave the Party any financial assistance beyond the amount contributed by every German.

When questioned about his contacts with leading members in the National Socialist movement, he stated in his direct examination, transcript German p. 10835, English p. 10692, that he had only made one call each on Seyss-Inquart and T REOVEN, the Reich-Commissars of Holland and Norway, both in order to intervene on behalf of foreign business-friends who had been arrested by the occupation authorities. He never again got into touch with these two men in the National Socialist movement. In Dec. OSTER 4, Exh.3 Book I p 11 the former employee of the Syndicate Georg SCHIKORA states that the Nitrogen Syndicate did not develop into a definitely National Socialist enterprise under him. In his direct examination, transcript German p. 10816, English p. 10672 Dr. OSTER stated that the German Arbeitsfront (Labor Front) had felt it its duty to present the enterprise with a diploma for extraordinary accomplishments in the social welfare sphere.

II. CONNECTIONS WITH THE WEHRMACHT.

Dr. OSTER did not become a Wehrwirtschaftsfuehrer, (Military Economy Leader), nor does the prosecution say so. Of leading personalities in the Wehrmacht he only knew, as he stated in his direct examination, transcript German p. 10816, English p. 10673, the chief

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of the Military Economy staff (Wehrwirtschaftsstab) General THOMAS whom he had only visited once because he wanted, immediately after the occupation of Norway, to go to Norway, there to give the chiefs of the Norsk Hydro possible necessary help in dealing with difficulties with the occupation forces. The General Director of the Norsk Hydro, ERIKSEN, OSTER Doc.49, Exh.53, Book II, page 54, says as much in the following words concerning this assistance:

"Immediately after the occupation of Norway, Dr. OSTER hastened to Norway in order to assist Norsk Hydro and its direction with the intention of protecting the company against German interference in its activities."

The prosecution has submitted Doc.NI-7796, Exh.922, Book 49 Engl.page 15 which is a letter by the Nitrogen Syndicate to the I.G. Farben Military liaison office written in answer to a query about the so-called shadow factories in England. OSTER stated to this question in his direct examination, transcript German p.10617, English p.10673/74, that what had been wanted was information given by the statistical department of the Nitrogen Syndicate. The knowledge which enabled the statistical department to give the required information, was derived from newspaper-archives.

III. I.G. Farben Military Liaison office

The prosecution attaches special importance to the establishment of the I.G. Farben Military Liaison Office. Dr. OSTER received the following among the documents which were submitted by the prosecution in this connection: NI-4702, exh. 101, Book 5, English p.80 (letter from Ludwigshafen about the establishment of I.G. Farben Military Liaison Office of 5 September 1935), NI-8776, Exh.199, Book 8, English p.27 (letter from the Military liaison office to Dr. von BRUENING, Frankfurt/Main about the problem of mobilization questions in the sales-departments of 8 December 1937).

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About his attitude to the "Vermittlungsstelle W" (military liaison office W) Dr. OSTER states in his direct examination, transcr. German p. 10838, English p. 10695, that he, or rather the I.G. Department Badamon supervised by him, had received after the establishment of the military liaison-office some of the circular letters sent to many people which had given him the impression that the liaison office was an organization which was supposed to carry on a standardized mediation between the I.G. Farben plants and the government authorities. As the Nitrogen Syndicate was a sales combine, they had no direct dealings with the military liaison office W.

In defense document OSTER 25, Exh. 25 Book I, page 25, the manager of the Nitrogen Syndicate Rudolf HILGER states that the chief of the I.G. Department Batestick had only occasional dealings with the military liaison office W.

The Chief of the department Badamon, Dr. BENN, says in document OSTER 19, Exh. 18, Book I, page 50, that the services of the military liaison office W were requested twice or three times at the most during the years 1935-1945 when there was a question of getting some information.

To the second prosecution document mentioned above which deals with the so-called MOB (mobilisation) preparations, Dr. OSTER declares in his direct examination, transcript German p. 10840, English p. 10697, that it dealt with an argument which had at that time arisen about a question of competency between the military liaison office W and the Political Economy Dept. He states that he himself was at that time under the impression that he was supposed to be drawn into the conflict, He had therefore given a non-committal reply.

Dr. OSTER did not receive any further documents about the military liaison-office W.

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IV Mob (mobilization) questions in the commercial sectors

Some of the minutes of the Commercial Committee submitted by the prosecution contain a paragraph headed "Mob-Questions". Dr. OSTER himself said in his direct examination about this that it was mainly a question of retaining of the commercial personnel in case of war, (transcript German p.10840 English page 10693/99.

The Chief of the personnel department of the Nitrogen Syndicate, Fritz WERNER says to the question of the treatment of MOB-matters in this syndicate in doc. OSTER 10, Book I, Exh.10, p.28 that from 1938/39 onward a personnel files was kept in the personnel department for the sole purpose of safeguarding oneself against a surprise calling-up of personnel.

The counter intelligence agent of the Nitrogen Syndicate, Rudolf HANSER declares in doc.OSTER 25, Exh. 25 Book I, p.64, that MOB plans did not enter into his sphere of activities. He also declares "As I attended the meetings of the Commercial Committee I know that the so-called MOB questions were also discussed there. They only dealt with the retaining of commercial personnel in case of war."

V. LOYALTY DECLARATIONS

Under Doc.No.NI-4959, Exh.363,Book 14, Engl.p.9 the prosecution has submitted the minutes of the Commercial Committee meeting of 10 September 1937. They deal with the question of the reliability of employees who were to be sent abroad. This matter has been treated by the defense counsel of the defendant SCHNITZLER as part of his defense.

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Concerning the sale of dyestuffs the witness OVERHOFF stated, transcript German p.5804, English p. 5766/67, that his idea was that this was nothing more or less than a show of having come to a decision for the sake of satisfying the constantly repeated demands of the AG(Lauslandsorganisation) of the NSDAF, without ever actually carrying out any measures.

The Chief of the personnel department Fritz WERTHER stated for the Nitrogen Syndicate in doc. OSTER 21, Exh.26, Book I, page 53, that Dr. OSTER did not inform him of this decision and that no such measures were ever carried out within the Syndicate.

VI. SPECIALIST DEPARTMENTS

The prosecution has submitted documents NI-3765, Exh. 508, Book 24 English p.106, N^o-4899, Exh.503, Book 24, page 56, NI-5695 Exh.502 Book 24, p.24 which show that Herr OSTER became chief of the special branch "Nitrogen Fertilizer" (Luengestickstoff) within the industrial rehabilitation program. Dr. OSTER in his direct examination, transcript German page 10833/34, English page 10690/91 in doc. OSTER 22, Exh.22, Book I, p.55 and the chief of the economic group "Chemical Industry" Dr. FRITZ EHMANN who describes the importance of this position in the following words. He says that the questions referring to nitrogen which were normally dealt with by a specialist group or a specialist department were to a large degree withdrawn from the sphere of influence of the Nitrogen Syndicate so that, as he states, Dr. OSTER's position was of very little importance in the organization of industrial economy.

The prosecution attaches importance to the number of members of I.G. Farben who held official positions. It has introduced in this connection prosecution document NI-6702,

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Exh. 772, Book 17, English p. 23. This is a review given by the defendant ILGNER as an affidavit. The name of my client Dr. OSTER does not show up at all in this prosecution document.

VII. ACTIVITY IN THE STICKSTOFF-SYNDIKAT (Nitrogen Syn-
cate)

Dr. OSTER became director of the Nitrogen-Syndicate in the year 1930. The chart which has been introduced as Doc. OSTER I, Exh. 1, Book I, page 1 gives information about the organization of the syndicate and the extent of responsibility of my client. The excerpt of a report to the tax office in Berlin, to which the Syndicate was responsible, introduced as Doc. OSTER 2, Exh. 2, Book I, page 2 gives an idea of the size of the syndicate, its sales and the number of persons employed by the syndicate. The yearly sales of the Nitrogen Syndicate amounted to nearly 500 Mill. Marks the Syndicate employed nearly 1000 workers.

The former employee of the syndicate, Mr. BENN, has made a statement about the extent of the work done by Herr OSTER in the syndicate in Doc. OSTER 19, Exh. 18, Book I, p. 50. Mr. BENN says that at least 90% of the work done by Dr. OSTER was on tasks connected with the Nitrogen Syndicate. After Dr. OSTER had joined the Nitrogen Syndicate the Central Committee of the Vorstand decided on 12 December 1939 that Dr. DUSTEFISCH was to keep up contacts with the Nitrogen Syndicate and would have to concern himself with questions concerning the I.G. Farben. This made Herr OSTER trustee for all members of the Nitrogen Syndicate. Several managers of the German nitrogen industry have made statements about the way in which he managed the Syndicate in document OSTER 3, Exh. 14, Book I, page 8. We furthermore refer to the remark of the

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member of the Vorstand of the Ruetgers-Werke, Carl Friedrich MUELLER Doc. OSTER, 14, Exh. 15, Book I, page 37 as well as to the statement made by the legal adviser to the Stickstoff Nitrogen Syndicate, Dr. Heinz SANLER, doc. OSTER 15, Exh. 16, Book I page 40. He states: "As far as there was a danger of a clashing of interests between the I.G. Farben and other partners Dr. OSTER always left it to another official of the I.G. Farben - mostly Dr. BUETEFISCH - to defend the interests of the I.G. Farben."

VIII. POSITION IN THE I.G. FARBEN

As a member of the Vorstand of the I.G. Farben Dr. OSTER had no special sphere of duties. He merely attended the meetings of the Vorstand, the Commercial Committee and meetings of the management of sparte I. His position in the Vorstand of the I.G. Farben is clearly shown by the description made by the former member of the Vorstand, Dr. Gustav PISTER, in Doc. OSTER 16, Exh. 19, Book I, p. 42 and that in reference to the Commercial Committee in the statement made by Dr. Kurt KRUEGER, Doc. OSTER 18, Exh. 20, Book I, page 48.

Dr. KRUEGER, who had been a member of the Commercial Committee since 1937, states: "The committee had no right to pass a resolution for the I.G. Farben, its only object was that of mutual information and advice. If all members agreed on any one question they felt the moral obligation to stick to their decision."

To the question of the position of Dr. OSTER in the Commercial Committee Dr. KRUEGER states the following: "He (OSTER) had not a sales-organization in the I.G. Farben under him either as was the case with other sales combine-directors. From this (the organizational set-up of the Nitrogen Syndicate) we must draw the conclusion that his (OSTER's) position in the Commercial Committee (Ka) was different from that of other sales-combine directors. He could

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not even feel himself morally bound by the interpretation of the K. A., but could only use the opinion of his colleagues of I. G. Farben in the discussions with his fellow business managers of the Nitrogen Syndicate.

That Dr. Oster actually did not turn over any resolutions of the K. A. to the Nitrogen Syndicate, the former director in the Syndicate, HANS RIEGER, testified to in Document Oster 37, Exhibit 35, Book II, page 25.

Regarding his interest in participating in the meetings of the Commercial Committee, Dr. Oster explained in his direct examination, Transcript, German page 10, 828, Eng. page 10, 686/87, that until 1928 he was with I. G. Farben as a technician and had only little experience in the commercial field. It would have been interesting and valuable for him, therefore, to have been able to take part in the meetings of his commercial colleagues in I. G. Farben. The nitrogen fertilizer business, in consideration of the completely different circle of customers, was not comparable with the field of work of the other sales combines. He regarded the participation as an often very interesting source of information.

With regard to the significance which the position of business manager in the Nitrogen Syndicate had for I. G. Farben, a statement of his intended successor, Dr. KURT KRUEGER, was introduced as Document Oster 17, Exhibit 21, Book I, page 47. He testifies that Geheimrat SCHLITZ explained to him in 1944 that the role which the sale of nitrogen had within I. G. Farben was not so important that its further representation in the I. G. Farben Vorstand was any longer justifiable.

IX. Propaganda and Intelligence.

I. G. Farben is accused of having put its organization at the disposal of National Socialistic propaganda and of the Intelligence Service.

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The field of work of my client is touched upon by only 2 prosecution documents. The one is the affidavit of Herr Dr. WALTER JACOBI, NI-7605, Exhibit 776, Book 44, Eng. page 18, in which he states that Herr Dr. Oster sent an employee of the Nitrogen Syndicate by the name of KURRER to London to the organization which was headed by Dr. JACOBI, and that he, Jacobi, found that KURRER was active in the German intelligence service. This circumstance is substantiated by an affidavit of KURRER, Document Oster 26, Exhibit 27, Book I, page 66, and of Frau VOGTENBERGER, Document Oster 27, Exhibit 28, page 69, and the claim of the prosecution invalidated. Moreover, in his direct examination, transcript German page 10,846, English page 10, 702, Dr. Oster points out the fact that Dr. Jacobi himself did not even state that Kurrer was at the disposal of the counter-intelligence service during the time he stayed in London.

It further refers to NI-070, Exhibit 790, Vol. 44, Eng. page 111. This concerns a report of a trip of the defendant ILGNER, in which, wholly in contradiction to the facts, he connects the trip of Dr. AHLGRIEM by order of the Nitrogen Syndicate with his trip to America. That this was not the case is shown by an affidavit of Herr Dr. AHLGRIEM, Document Oster 28, Exhibit 29, Vol. I, Page 71. Herr Dr. Ahlgriem was an agronomist and had special commissions in connection with the nitrogen business.

In its trial brief, page 56, the prosecution calls attention to the fact that propaganda material, books and pamphlets were sent abroad, and cites Exhibits 785, NI-8421, Vol. 44, Eng. page 95, and NI-8422, Exhibit 786, Vol. 44, Eng. page 96. These documents are concerned with business matters of the Sales Combine Pharmaceuticals. That these ever came to my client's attention, the prosecution neither claimed nor proved.

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In this connection, Document NI-6077, Exhibit 894, Vol. 48, Eng. page 102 should still be mentioned, to which the prosecution has attributed particular importance owing to the report which Herr Dr. OVERHOFF gave in the Commercial Committee. My client was present at this meeting. Herr Dr. Overhoff was not one of my client's subordinates. He was an employee of the Sales Combine Dye-Stuffs. Moreover, Herr Dr. Overhoff gives an explanation in his examination, Transcript, German page 5839, English page 5794/95. Likewise, Herr Dr. Overhoff reports about the reasons which made him recommend caution to the departments of I. G. Farben in their correspondence with South America.

The prosecution introduced a transcript of a meeting of the Commercial Committee, dated 17 April 1940, Document NI-5990, Exhibit 929, Vol. 49, English page 148. In this meeting, the problem of the cooperation of German industrial enterprises abroad was discussed, on which occasion my client, Dr. Oster, was present. Any details which could strengthen the claims brought forward by the prosecution are not apparent from this transcript.

In its statements on page 71 of the trial brief, the prosecution connects this meeting with the activities of the defendant von SCHWITZLER in the company for sales promotion. The members of the Commercial Committee had nothing to do with this activity. No proof has been offered that the documents named in the trial brief in this connection regarding details from the activities of the company for sales promotion were known to the members of the Commercial Committee. These are Document NI-1448, Exhibit 932, Vol. 49, Eng. page 164; NI-1449, Exhibit 933, Vol. 49, Eng. page 166; NI-1450, Exhibit 934, Vol. 49, English page 167; NI-1446, Exhibit 926, Vol. 49, English page 139; NI-7627, Exhibit 941, Vol. 49 English page 143.

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X. Employment of foreigners:

The prosecution introduced Document NI-6084, Exhibit 2111 in the cross-examination. It concerns a transcript of the meeting of the Commercial Committee of 12 May 1939 in which the problem of the employment of foreigners in German industries is treated. (Transcript, German page 10,917, Eng. page 10,770). The insignificance of this attitude of the Commercial Committee is revealed by the answer of my client in the redirect examination, transcript, German page 10,936,/37, English page 10,787/88, in which he states that the Nitrogen Syndicate employed foreigners far beyond that time. In particular, a liaison man from Norsk Hydro was employed in the Nitrogen Syndicate until the day of the German invasion of Norway. Herr Dr. Oster further pointed out that he remembers that from a certain time on, the employment of foreigners in German industries was officially regulated.

XI. Attitude regarding foreign

Partners of the C.I.A.-Convention.

As a proof of Herr Oster's participation in the preparations for an aggressive war, the prosecution submitted several affidavits of his former colleague, Dr. Walter JACOBI. In Document NI-7745, Exhibit 611, Vol. 34, Eng. page 108, Dr. Jacobi states that after the invasion of Austria the Nitrogen Syndicate was ordered to treat Austria as a domestic market, and that in the cartel agreements a clause should be inserted in order to take care of the eventuality of later changes of boundary. A propos of this, the former legal adviser of the Nitrogen Syndicate, Egon BECKER, Oster Document 55, Oster Exhibit 31, Vol. II, page 71, who may be regarded as an especially competent witness in his capacity as official in charge of the cartel agreements,

Closingbrief Oster

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states that not until the negotiations in July 1939 was a force majeure clause inserted, which, although it was not intended solely for this purpose, also allowed for the event of war. He particularly stresses that this clause was in accordance with a suggestion of the INA/London, and was decided upon by the CIA partners.

Dr. Jacobi points out as particularly noteworthy the fact that in 1938 the Nitrogen Syndicate offered the international cartel a part of its nitrogen export quota. He interpreted this as a proof of the fact that the German nitrogen production was being converted mainly into synthetic gasoline and synthetic explosives. Herr Becker stated this in the document mentioned, just as Herr Dr. BENN does in Document 56, Oster Exhibit 32, Vol. II, page 85. Both state that it was not a matter of an export quota not used by the Germans, but that foreign producers of nitrogen desired for economic considerations to sell their export quota for money. The Nitrogen Syndicate could not absorb these quotas as in former years, since it was not in the position to allocate free foreign currency for this purpose, which would have been necessary according to the agreements. Therefore, it offered its quotas to the English and Norwegian members.

Further, Jacobi calls attention to the fact that there was much talk about war in 1938 among the CIA partners, from which the prosecution would like to draw the conclusion that Herr Dr. Oster knew of the intentions of an aggressive war. Even if this presentation of evidence does not yield conclusive proof, I would like to call attention in this connection to the direct examination of my client, transcript German page 10,847/48, English page 10,703, in which he just as Herr Dr. FRANK-TAHLE, in his statement Oster Document 54, Oster Exhibit 30, Document Book II, page 68 - made plausible statements regarding the fact that those persons who had to administer the funds of the CIA partners were obliged

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to consider what should happen if war were to break out. In this connection, attention is particularly called to the statement of Herr Dr. FRANK-FAHLE, in which he mentions the motives which led to the founding of the INA. The reading of this statement makes the situation understandable. Moreover, let me further call attention to the statement of Dr. Frank-Fahle, who states that Herr Dr. Jacobi himself and the General Director of the Norsk Hydro, Herr ERIKSEN, had a decisive part in the decisions concerning the INA.

Through the statement of Herr Jacobi and through other affidavits offered in evidence of Herr Hagert, NI-9052, Exhibit 51, Vol. 2, English page 61 - the idea is conveyed that I. G. Farben attempted to attain to a world monopoly in the nitrogen field, and was particularly desirous of breaking the hegemony of Chilean saltpeter. Attention is called to the examination of this deponent in the cross-examination, transcript German page 1494 ff, English pages 1518-30, in which it becomes evident that the witness had no over-all picture of the field judged by him. Proof that there were no plans for world domination in this field is given by the clear statement of my client in his direct examination, transcript German page 10,854/55, English page , as well as the survey listing the relationships to the Chilean saltpeter bids (Oster Document 57, Exhibit 33, Vol. II, page 1.)

With reference to the credibility of Herr Dr. Jacobi, I call attention to the statement of my client in the direct examination, transcript German page 10846, English page 10702, in which he describes Herr Dr. Jacobi's motives as follows:

;I have heard in the meantime that Dr. Jacobi had many difficulties abroad because he was still considered a representative of Farben and the Nitrogen Syndicate. Obviously, he had the same difficulties as many others whom we managed to accommodate decently abroad.

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Furthermore, I call attention to the attitude which Herr Oster displayed with regard to Herr Jacobi before the war began, to the statement of Dr. BENN, Oster Document 5, Oster Exhibit 4, Vol. I, page 14, SCHIKORA, Oster Document 4, Exhibit 3, Vol. I, page 11, and FRANKE, Oster Document 8, Exhibit 8, Vol. I, page 23.

The prosecution accuses I. G. Farben of having hindered the development of foreign industries by its cartel and convention policy in the international field. The nitrogen field was not treated in the prosecution documents. In refutation of this charge I call attention to the affidavit of Dr. OSTER, Document Oster 30, Exhibit 34, Vol. II, page 1, in which he gives a short summary of the international conventions in the field of nitrogen fertilizer, and to his answer in his direct examination, transcript German page 10,857 ff, English page 10, 712/13.

In his examination, transcript German page 10,860, Eng. page 10,716, Herr Oster makes a statement with regard to the exhibit of the prosecution 1018, NI-10784, Vol. 43, page 262. It concerns the working out of plans for the sub-committee for preparations for war of the Senate. The expression of opinion apparent in this document is brought in in support of the claim stated above. Herr Oster gives a factual explanation of the incorrectness of the opinion expressed in this report. The opinion held there is further refuted by an affidavit of Herr SCHAEFFEL, Oster Document 35, Exhibit 37, Vol. II, page 29. From this statement it is apparent that the German-English-Norwegian group in the CIA did not dominate the other CIA partners.

XII. Financial Support.

The documents which were presented on page 14 and 15 of the trial brief of the prosecution for the contributions of I. G. Farben do not mention

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my client, Dr. Oster. In no case are documents concerned which came to his attention.

In his direct examination, transcript German page 10 855/56, English page 10711, he states that he had no part in the individual contributions, since this was a matter which was not under his jurisdiction. The fact is not disputed that he knew in broad outline of the contributions which every German or every German enterprise had to make after National Socialism came to power.

If Herr Oster had desired to promote National Socialism and to prepare for the aggressive war by contributions, he would have had opportunity to make rather large contributions through the Nitrogen Syndicate. This he did not do. Proof has not been submitted. As he states in his direct examination, transcript, German page 10857, English page 10711/12, he refused all solicitations with the excuse that the members of the Syndicate personally make contributions, and referred them to them. From this it may be seen that the attitude with which he is charged by the prosecution not only is not proved, but was altogether refuted. If Herr Oster had desired to make contributions, he surely could have done this from the funds of the Nitrogen Syndicate. It may hardly be assumed that anyone would have dared at that time to reproach him for making contributions for the political System which was then the predominant power in Germany.

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XIII. Criminal Intent.

The prosecution has offered no direct proof that Dr. Oster knew of the plans of Hitler to wage a criminal aggressive war, and that he intentionally offered his services available for these criminal objectives. In the trial brief on pages 76-105 it tried to present the evidence in the following way. It cited generally known facts and referred to such facts in documents, and concluded from this that the knowledge of such facts meant at the same time a knowledge of the criminal plans of Hitler. These are essentially the facts mentioned in detail as follows.

1. The Party Platform of Hitler, Trial Brief, page 78
2. Hitler's Book "Mein Kampf", Trial Brief, page 79
3. Goering's speech before the election 1933, Trial Brief page 81
4. Abrogation of various sections of the Reich constitution by Hitler, Trial Brief page 81
5. Establishment of the Secret State Police by Goering, Trial Brief page 82
6. Encroachments upon the independence of the judiciary, Trial Brief page 82
7. Setting up of concentration camps, Trial Brief page 83
8. Anti-Jewish Legislation, Trial Brief page 82
9. Conclusion of the non-aggression pact with Poland, Trial Brief page 84a
10. Establishment of the Reich Defense Council, Trial Brief page 85
11. Hitler's speech regarding the German people's readiness for peace, Trial Brief page 86
12. Organization of the German Luftwaffe, Trial Brief page 87
13. Renunciation of the Versailles Treaty, Trial Brief page 88
14. Introduction of the Reich National Defense Law, Trial Brief page 88

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15. March of German troops into the demilitarized zone of the Rhineland, Trial Brief page 89

16. Forcing out of Schacht, Trial Brief page 90.

These events are historical events which were known not only to the defendants but to the entire German people and also abroad. In part they are historical events whose importance was only correctly realized after Hitler's domination had ended. If the punishability of the action of a person is dependent upon his inner attitude

at the time of the action, it is impossible - retrospectively to draw conclusions of which one was not capable until the end of 1945. Moreover, innumerable other people could be charged with the same offense as the prosecution has made with regard to the defendants. Not least of all, foreign publishers and statesmen, to whom these things were just as well known as to the defendants, perhaps even more. That the inference was not drawn abroad that Hitler was obviously planning an aggressive war is revealed by the fact that the foreign governments negotiated with the leaders of the Third Reich and concluded treaties. It may be that perhaps such was seen differently by the foreign statesmen, but that they considered the action taken by them correct on the basis of the political situation. At any rate, the defendants can claim that the recognition of the Third Reich, the pacts made with it, and the fact that no steps were taken against Hitler could be construed in such a way as to rule out the possibility of criminal elements being in the government of the Third Reich. In this connection, I refer to what my client stated in the cross examination. He testified that the distrust following upon one incident after the other of the plans of their own Reich leaders was allayed by the attitude of the foreign countries, which was documented for example by the German-English naval agreement, by the German Polish non-aggression pact, the participation in the Olympic games and similar matters.

Furthermore, the prosecution referred to a rather large number of prosecution documents, the knowledge of which it imputes to all the defendants. From this it draws the conclusion that all defendants had, to know that Hitler was intent upon waging a criminal war of aggression, and that they abetted him in this intent. In each case, I have added to these documents whether they were known to Dr. Oster or not. The result of this check is that - with one exception - No. 18 -

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Dr. Oster did not have knowledge of the documents, and it was not proved that he did know of them, insofar as generally known matters were not the subject. The documents just mentioned, are as follows:

- 1) D 203 Exhibit 37, Doc. Book III, Eng. page 64
EC 438 Exhibit 36, Doc. Book III, Eng. Page 62
Election speech of Hitler 1933: - Oster knew nothing of it.
- 2) NI 9784 Exhibit 57, Doc. Book III, Eng. Page 115
Discussion Crane - Du Pont - Bosch - did not come to Oster's attention.
- 3) NI 6960 Exhibit 82, Doc. Book IV, Eng. page 79
Announcement of the plant management Leverkusen of 1 May 1933.-----
intra-plant announcement: did not come to Oster's attention.
- 4) NI 1091 Exhibit 83, Doc. Book IV, Eng. Page 80
Leverkusen Plant announcement regarding representatives in the NSBO: did not come to Oster's attention.
- 5) NI 4884 Exhibit 84, Doc. Book IV, Eng. page 81
Minutes of a meeting of the social welfare commission of Ludwigshafen regarding participation of the plant representation in plant hiring policy:-----
did not come to Oster's attention.
- 6) NI 100, Exhibit 71, Doc. Book IV. Eng. page 77
Law regarding the preparation of the organic expansion of the German economy:-----
was generally known, since published in the Reich Law Gazette.
- 7) NI 10545 Exhibit 72, identification only.
Official announcement regarding the "Fuehrer principle" in the economy:-----
was generally known.
- 8) EC 128 Exhibit 716, Doc. Book 38, Eng. page 94
Report by a Government office regarding the industrial mobilization of September 1934-----
Bears secret stamp "Top military secret".
did not come to Oster's attention.

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- 9) NI 8420 exhibit 783, doc. book 44 English version,
page 93

Inter-office memorandum of the "Bayer" Directorate:

Was not brought to the attention of Oster.

- 10) NI 8422 exhibit 786, doc. book 44, English version,
page 96

Minutes of the meeting of the Sales Combine "Bayer":

Was not brought to the attention of Oster.

- 11) NI 8321 exhibit 102, doc. book 5, English version, page 8;
Affidavit by Struss, concerning war games:

Was not brought to the attention of Oster.

- 12) NI 2747, exhibit 99, doc. book 5, English version, page 77
Memorandum concerning TEA and other committees:

No proof that Oster had knowledge of it.

- 13) NI 4718, exhibit 138, doc. book 6, English version, page 16
Milch's visit at Ludwigshafen:

No connection with Oster.

- 14) NI 7241, exhibit 547, doc. book 28, English version page
Affidavit by Struss, concerning production of Buna:

Concerns matters outside the sphere of
interest of Oster, of which he had
no knowledge.

- 15) NI 4623, exhibit 491, doc. book 22, English version
page 90

Secret decree concerning the set up of a corps of
Military Economy Leaders (Wehrwirtschaftlichen Fuehr-
rerkorps)

No reason to assume that Oster was
informed about it, because he was no
Military Economy Leader (Wehrwirt-
schaftsfuehrer).

- 16) NI 084, exhibit 432, doc. book 20, English version page 1
Memorandum concerning an inter-ministerial conference:

No participation of the I. G. excepting
the case of Krauch; no conjecture that
the memo became known to Oster.

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- 17) NI 4717, exhibit 563, doc. book 29, English version page 11

Confidential letter of Ter Meer to Brinkmann concern
the production of Buna:

Had nothing to do with Oster; presumably did not come to his attention at all in view of the remark "confidential".

- 18) NI 1318, exhibit 834, doc. book 46, English transcript 36

Contribution for the "Sudetendeutsches Hilfswerk";
letter by Schmitz to Hilgenfeldt; correspondence
of Frankfurt with Hilgenfeldt:

Did not fall in Oster's jurisdiction he was informed about it subsequently.

- 19) NI 5196, exhibit 40, doc. book 1, English version page 54

Statement by Schnitzler:

Does not concern Oster.

- 20) EC 282, exhibit 455, doc. book 21, English version page 56

Report by Krauch concerning questions of production.

Was not brought to Oster's attention.

- 21) NI 326, exhibit 779, doc. book 44, English version page 59

Report of the Reich Economic Chamber to Minister
Lammers concerning the "Kieler Woche"

Oster's participation not proved; moreover, in view of the fact that foreign leaders of the economy were present it can be assumed that the agenda of the meeting was generally well known.

- 22) NI 7078, exhibit 1025, doc. book 50, English version page 29

Letter to the Reich Ministry of the Economy:

Not proved that Oster was informed of it, contents had no interest for him.

Therewith the case in chief of the prosecution, which tried by indirect means to prove Oster's knowledge of the criminal aggressive intentions of Hitler, failed.

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War Crimes (Spoliation):

The prosecution charges the defendants with having made themselves guilty of plunder and spoliation of public and private property in the countries occupied by Germany, pursuant to the Control Council Law No 10, II, 1 b. The prosecution refers furthermore to Articles 46, 53 and 55 of the supplement to the Hague Rules of Land Warfare of 1907. I will deal in my following arguments with those cases mentioned by the prosecution which are in direct connection with my client, Dr. OSTER. If I do not deal in this closing brief with the other spoliation cases then I do so especially for the reason, that based on my theory of the responsibility of my client, charges cannot be made against him concerning those cases in which he did not participate directly, because he had no detailed knowledge of them and furthermore, he also had no possibility of exerting any influence on the course of such cases.

1. Eastern Territories: a) Stickstoff Ost G.m.b.H.

b) Stickstoffwerk Chorzow

2. Norway:

Membership in the Styre
of Norsk Hydro

3. Western Territories: Import of nitrogen into
Germany.

Ad 1. Eastern Territories:

a) STICKSTOFF OST G. M. B. H.

Concerning the activity of my client within the Stickstoff Ost G.m.b.H., I may be permitted to refer especially to the legal foundation of the charges for plunder and spoliation, with regard to the decision in this case. The prosecution refers to the Control Council Law No 10 and the Hague Rules of Land Warfare. Even if the precise wording of these two laws is greatly at variance, it is nevertheless possible to state that by analyzing the conception of plunder or spoliation its meaning is connected with the taking away or the violation of the property rights of others. That this presupposition is lacking in the case of the Stickstoff Ost G.m.b.H.

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can be seen from the document material submitted by me. In principle the following must be stated.

1) The Stickstoff Ost G.m.b.H. was a supervisory company.
----- (Betreuungsgesellschaft)

The term "supervisory" was defined by the official in charge of these matters at the Reich Ministry for the Economy, Dr. Hoffmann, in an affidavit (document Oster 42, exhibit 46, doc. book II, page 35) in the following two sentences.

"The obvious procedure of handing over individual enterprises to specific German firms was not adopted in order to avoid possible conflicts between individual interested parties or even claims for subsequent acquisitions."

"For nearly all branches of the chemical industry so-called supervisory companies were set up with very little capital, whose task it was to advise and help the appointed works trustees (loaning of personnel of associate firms, releasing of material for the reconstruction of installations destroyed by the retreating Russians, supply of auxiliary products not available in the occupation zone etc.) The supervisory companies had no influence whatsoever on the plant management, in particular they had no right to issue directions to the trustees".

This definition conforms with that given in a publication as to the foundation of the Company, which was published in the "German Reich Gazette" of 18 November 1941. Document Oster 45, exhibit 49, doc. book II, page 42.

2. "The Stickstoff Ost G.m.b.H. was founded by the
associate firms (Gesellschaftsfirmer) of the Nitrogen
Syndicate, upon suggestion and by order of the Reich
Government." This is the formulation contained in the affidavit by the attorney-at-law Dr. Sander, the former legal adviser of the Nitrogen Syndicate, document Oster 45, exhibit 49, document book II, page 44. This conforms with the statement of Dr. Oster made in his direct examination. He testifies that on account of this foundation he was asked to participate in conferences of the Reich Ministry for the Economy and that he was instructed to found the Stickstoff Ost G.m.b.H. He testifies further-

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more that he found this commission extremely disagreeable because he was afraid that with this commission the Nitrogen Syndicate would overstep its limitations as a commercial enterprise.

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(German transcript, page 10876, English transcript page 10731/32).

3. Dr. Oster tried in the negotiations with the Reich Ministry for the Economy to limit as far as possible the field of activity regarding the Stickstoff Ost G.m.b.H. I refer to the Oster document 43, exhibit 47, doc. book II, page 38, submitted by me which is the draft of a letter certified by the legal adviser of the Nitrogen Syndicate, Becker,

The 2nd paragraph of this letter reads:

"The task of the company, namely assisting the nitrogen enterprises concerned by word and deed, is to mean mainly giving expert advice and directions, providing experts, other workers, materials and spare parts and negotiating for loans."

The contents of this letter is confirmed by an affidavit of Dr. Sander, document Oster 45, exhibit 49, doc. book II, page 44 in paragraph 2. He states the following, (in paragraph 3).

"It was in particular Dr. Oster who embarked upon the new task with great hesitation and who, from the very beginning, opposed the idea of the I. G. trying to influence the work of the company."

In paragraph 5 of his affidavit he states the following:

"As far as I know, neither the managements of the Stickstoff Ost G.m.b.H. or of the Nitrogen Syndicate nor, with their knowledge, any associate of the Syndicate, ever showed any interest in the acquisition of the factories, especially since, as far as I remember, the statute of the G.m.b. H. explicitly prohibited such a thing. I know only too well that Dr. Oster severely criticized any such plans

Herr Dr. Ahnemann, who was employed by the Stickstoff Ost G.m.b.H. confirms this in his affidavit, document Oster 46, exhibit 50, doc. book II, page 48 and states furthermore the following:

No member of the management of the Stickstoff

Ost G. m. b. H. or of the Stickstoff Syndicat

G. m. b. H. has ever been to Kamenskoje."

The evidence proves that not only were no property changes regarding the plants of the Stickstoffwerke in Russia made but also that no such changes were aspired to by Dr. Oster. Therewith it is proved that no violations of private or public property

in Russia were committed by the Stickstoff Ost G.m.b.H.

In my opinion, my client, in view of his activity cannot be brought in to connection with the spoliation plans of the leaders of the Reich in such a manner that he could be characterized as a participant in such spoliation plans. The prosecution tries to establish a connection by virtue of the documents in Doc. book 63 of the prosecution. These documents consist of official German announcements, which, in the main, were kept secret. The prosecution intends to construe a connection between these documents and the actions of the defendants, by referring to the exhibit 1173, document NI 6732, doc. book 63, English version page 34, and to the report of the employee of the I. G., de Haas, exhibit 1175, document NI 2996, doc. book 63, English version page 37. It should be kept in mind that the First Document is dated 2 November 1942, while Herr Dr. Haas' report is dated 3 January 1942. In contrast, I should like to mention that the Stickstoff Ost G.m.b.H. was founded considerably earlier. The announcement as to its foundation was published in the "German Reich Gazette" of 18 November 1942, document Oster 44, exhibit 48, doc. book II, page 42. The letter of the Nitrogen Syndicate addressed to the Reich Ministry for the Economy, concerning the foundation, is dated 24 July 1941 (doc. Oster 43, exhibit 47, doc. book II, page 38). It is also impossible to establish the connection, which is tried to be proved by the affidavit of Dr. Krueger, exhibit 1570, document NI 19728, doc. book 64, English version 42, because it refers to the de Haas report which was made considerably later than the actual foundation

of the Stickstoff Ost G.m.b.H.

It would be wrong to assume that independent of the above mentioned documents my client should have participated in intentions of the the government.

The documents submitted by me, prove that

- a) he founded the Stickstoff Ost G.m.b.H.
pursuant to an order or a directive of the Reich
Ministry for the Economy,

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- b) he accepted this task only reluctantly
- c) his conduct towards the sole enterprise operated as a supervisory plant by the Stickstoff Ost G.b.M.H., the Werk Kamenskoje, belies any intentions for spoliation or plunder.

Therefore, he cannot be charged with the approval of directives of the government authorities which became known to him only afterwards and only in part and therewith also not with a participation in the execution of such measures.

b) STICKSTOFF UND CHORZOW

During the cross-examination, the prosecution showed my client document NI 4966, exhibit 2113 (English transcript page 10778/79, German transcript page 10925/26) From this letter, which was neither written by my client nor addressed to him, nor was brought to his attention by any other means, it can be ascertained only that the I. G. had some claims against the German Reich in connection with the Polish Stickstoffwerk CHORZOW. This letter, per se is not sufficient to prove a fact, which, according to the Control Council Law No 10, or the Hague Rules of Land Warfare would constitute a case of violation of property in occupied countries. In his examination my client clarified this affair, as far as he was able to do so by virtue of his factual knowledge of the matters involved. He testified that it concerned a nitrogen plant, owned by the Polish Government, which was supervised by the VIAG (Vereinigte Industrieunternehmen Aktiengesellschaft) an enterprise owned by the German Reich. According to his recollection, the I. G.

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either provided its experiences, or personnel for the management of this plant. (German transcript page 109.5, English transcript page 10778/79)

If the defense were not hampered in the quick procurement of evidence by the present political division of Germany and would not face other insurmountable difficulties,

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a final clarification of this transaction would have been possible, in the same manner as shown now by a belatedly received affidavit, which states that the Reich Ministry for the Economy requested from the I. G., that they provide a technician for the assistance of the VIAG and that within the I. G. the question of the compensation was discussed. The affidavit states furthermore that Dr. Oster, in view of his good connections with that Ministry, was asked to intervene by Dr. Mulert with regard to this compensation. This evidence would also have substantiated Dr. Oster's testimony that he acted in this case only as a kind of letter carrier and that otherwise he had nothing to do with this particular project. (German transcript, page 10927, English transcript, page 10780).

Ad 2. Norway.

MEMBERSHIP IN THE STYRE (AUFSICHTSRAT)

OF NORSK HYDRO.

In order to prove an alleged spoliation of Norway by Dr. Oster, the prosecution introduced merely one single document, namely a survey of his positions, drawn up by the defendant himself, (document NI 9756, exhibit 312, doc. book XI, English version page 167) in which he mentions that from 1941 on he was a member of the Aufsichtsrat of the Norsk Hydro. The conclusion drawn from this fact by the prosecution in its trial-brief, which characterizes this appointment as the first step in the spoliation of Norway, is not proved by even one document. This case in chief of the prosecution

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is contradicted by various kinds of evidence. The defendant Bueterfisch testified in his examination (German transcript page 8954/5, English transcript page 8865/6) just as the wife of the defendant stated in an affidavit (document Oster 47, exhibit 51, doc. book II, page 50) that the appointment of Dr. Oster as a member of the Aufsichtsrat of

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Norsk Hydro, was initiated by the then Generaldirektor Aubert. The improbability of the assumption of the prosecution becomes clear furthermore from the fact, that Dr. Oster as a nitrogen salesman was not at all the best suited person to act as the representative of the I. G. for a light-metal project. That Dr. Oster in reality did not work against the interests of Norsk Hydro, is proved by the confidence which Norsk Hydro placed in him during the years after the occupation of Norway. I refer to document Oster 50, exhibit 54, doc. book II, page 56, in which it is proved that Herr Dr. Oster advocated an unrestricted production of nitrogen by Norsk Hydro. Document Oster 51, exhibit 55 doc. book II, page 59, and doc. Oster 52, exhibit 56, doc. book II, page 61 as well as doc. Oster 53 exhibit 57, doc. book II page 65 bear testimony that Dr. Oster took the initiative to assist Norsk Hydro in its endeavors directed against the official intentions to enlarge the plant for the production of "heavy water", a measure which would have meant an endangering for Hydro, because "heavy water" plays a part in the production of atomic energy. I refer finally to document Oster 48, exhibit 52, doc. book II, page 52 and doc. Oster 49, exh. 53, doc. book II, page 54 i. e. to letters written by the Generaldirektor of Norsk Hydro and the statement made by him, which declares that Dr. Oster protected the management of Norsk Hydro against the interference of the German occupation authorities, The statement of Herr Ericson that Dr. Oster's intervention was successful and could not be overestimated and the assertion that the Hydro concern is greatly indebted to Dr. Oster, proves the falsity of the theory of the prosecution that Dr. Oster tried to dominate Norsk Hydro to put it under pressure and plunder its resources.

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Ad 3. Western Territories;

IMPORT OF NITROGEN INTO GERMANY.

In order to prove a spoliation action allegedly carried out by my client the prosecution introduced a letter addressed by him to the defendant von SCHNITZLER -document NI 676, exhibit 2.15- in which my client excuses his absence from a meeting of the Commercial Committee with his work concerning the import of nitrogen from France to an extent of 60,000 tons. Notwithstanding the fact that the document in question does not prove that my client instigated such an import and likewise does not state whether such an import actually was brought about, it was possible to clarify this transaction. In the first place I refer to the reply of my client in the re-examination -German transcript page 10935, English transcript page 10787- in which Dr. Oster testified that although it was intended to import nitrogen from France, this project was not initiated by him or by the Nitrogen Syndicate or by the I. G., but that they merely were used as helpers in order to carry out the request or the order of the authority in question.

Furthermore the counter-proof has been established with the examination of the witness RUMSCHEIDT, -German transcript page 14715, English transcript page 14436. Dr. Rumscheidt states that only measures of the state were concerned and that the Nitrogen Syndicate, as the distribution organization for Germany was ordered to distribute the imported nitrogen. He testifies verbatim: Dr. Oster himself could never exert any influence on the export to Germany, because this was the business of the Reich Authorities and not that of a private organization (the Nitrogen Syndicate)'.

CERTIFICATE OF TRANSLATION

15. June 1948

We, Wera SOLANDER, William ZIRKL, E.A. JOHNSON, hereby
certify that we are ^aduly appointed translator for the
German and English languages and that the above is a true
and correct translation of the document Closingbrief OSTER.

Wera SOLANDER
Civ.No. 20091

W. ZIRKL
Civ.No. B397928

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Case 6
Defense

MILITARY TRIBUNAL No. VI

Case No. 6

Closing Brief

for

Dr. Herman S C H M I T Z

submitted by
his defense counsels
Dr. Rudolf DIX
Hanns GIERLICH

Ring



CLOSING BRIEF SCHMITZ

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Correction filed before this page

Corrections

to be made in the Closing Brief for Dr. H. SCHMITZ

(Case No. 6)

Item No.	Page	Line(s)	Correction
1	1 (List of Contents)	3	"The main administration" should be "The chief management"
2	6	21	Insert "or about a certain business transaction carried out by this colleague" after "of a colleague"
3	8	13	"This fact" should be "This testimony"
4	8	18	"Thus the unsubstantiated testimony" should be "Only the testimony"
5	14	10	"Chief administration" should be "Chief management"
6	14	24	"main administration" should be "chief management"
7	15	2/3	"main administration" should be "chief management"
8	17	10	Insert "participating in all Vorstand meetings" after "a supervisory body"
9	17	25	"With reference to the defendant" should be "With reference to the defendants"
10	18	11/12	"Council of the Gods" should be "Council of the Gods"
11	22	24	"Stickstoffproduktion" should be "Stickstoff-industrie"
12	23	30	"KASTE" should be "KASTL"
13	29	7	"faction leader" should be "fraction leader"
14	31	9	"by their statements" should be "by her statements"
15	32	24	Insert "53. Schmitz Doc." after "Schmitz Document"
16	36	20	"p. 100" should be "p. 10"
17	42	7	"page 5413" should be "page 5713"
18	43	3	Insert "(p. 41/42)" after "above"
19	56	7	"8 August 1948" should be "8 August 1938"

Item No.	Page	Line(s)	Correction
20	60	19	"SCHMIDT Doc. VI" should be "SCHMIDT Doc. Book VI"
21	61	9	"report" should be "lecture"
22	67	14	"Prosecution" should be "Defense"
23	74	20	"long-term-aims" should be "long-range-goals"
24	77	9	"revealed" should be "reveals"
25	78	2	"for which it was" should be "for which it is"
26	79	13	"affidavit of MUECH" should be "affidavit of von MUECH"
27	84	2	Insert "(SCHMIDT)" after "He"
28	84	11	"expansion program" should be "construction program"
29	86	7	Delete "leading to the formation" after "motives"
30	86	10/11	"still in existence" should be "which still existed"
31	87	4	"operation" should be "action"
32	87	15	"on the verdict at a later date" should be "on the perception of a later date"
33	89	9	"standing orders" should be "by-laws"
34	89	24	"petrol" should be "gasoline"
35	90	5/6	"the statements by the defendants ter Meer and BUNTFISCH in their closing briefs" should be "the statements in the closing briefs for the defendants ter MEER and BUNTFISCH"
36	90	10/11	"the statements by the defendants KRAUCH and ter MEER in their closing briefs" should be "the statements in the closing briefs for the defendants KRAUCH and ter MEER"
37	90	15/16	"the statement by the defendant BURGHEIN in his closing brief" should be "the statement in the closing brief for the defendant BURGHEIN"
38	90	20/21	"the statements by the defendants v. KNIRIEM in his closing brief" should be "the statements in the closing brief for the defendant v. KNIRIEM"
39	90	30/31	"the statements by the defendants ter MEER, v. KNIRIEM and BUNTFISCH in their closing briefs" should be "the statements in the closing briefs for the defendants ter MEER, v. KNIRIEM and BUNTFISCH"

Item No.	Page	Line(s)	Correction
40	90	38/39	"the statements by the defendant BUEHGIN in his closing brief" should be "the statements in the closing brief for the defendant BUEHGIN"
41	91	4/5	"the statements by the defendant GATTINHAU in his closing brief" should be "the statements in the closing brief for the defendant GATTINHAU"
42	91	59	"legal appreciation" should be "legal evaluation"
43	93	9	"The indictment sub Count I must also be refuted" should be "Already by these reasons the indictment sub Count I must be refuted"
44	94	19	"(Book 19, English page 64, German page 82)"
45	98	16	Insert "of" after "re-establishment"
46	102	7	"negotiation" should be "negotiations"
47	107	20	"reference is made in" should be "reference is made to"
48	112	7/8	Insert "also" before "not in accordance"
49	116	2	Insert "(Dr. DIX)" after "the undersigned"
50	116	5/6	"state of emergency" should be "state of necessity"
51	117	3	"30 May 1943" should be "30 May 1942"
52	117	10	"requirements would" should be "requirements could"
53	120	16	Delete "the" before "Betriebsfuhrer"
54	120	27	"Engl. tr.p. 7402" should be "Engl. tr.p. 7403"
55	123	16	"of facts on" should be "on facts of"
56	132	17	"compiles" should be "compiled"
57	134	5	Insert "Anschwitz" after "plant"
58	135	2/3	"instruction" should be "order"
59	135	4	"Prosecution Exhibit" should be "Prosecution Exhibits"
60	135	14	"at first" should be "in the beginning"

Item No.	Page	Line(s)	Correction
61	135	27	"their statement" should be "their statements"
62	136	9	Delete "transcript" before "page 88"
63	136	9	Delete "transcript" before "page 143"
64	136	12	Delete "transcript" before "page 68"
65	136	12	Delete "transcript" before "page 107"
66	141	17	"testifies" should be "testified"
67	143	19/20	"a cover letter of the Central Auditing Department" should be "a covering letter of the Central Book-keeping Department"
68	143	21	"Central Auditing Department" should be "Central Book-keeping Department"
69	145	19	"Under the circumstances" should be "Under these circumstances"
70	145	27	Insert "140" after "see page"
71	149	4/5/6	Change "The defendant Schmitz no more belonged to the party, as the SS, or the so-called 'Freundeskreis Himmler' at any time" to read "The defendant Schmitz did at no time belong either to the party, the SS, or the so-called 'Freundeskreis' Himmler"
72	149	6	"He never participated at any functions" should be "He never participated in any meetings"
73	151	12	"8858" should be "8859"
74	157	2	Insert "members" after "fallen"
75	16	9/10	"he appointed their execution" should be "he approached their solution"
76	19	18	"1930" should be "1933"
77	150	18	"1943" should be "1948"

Munich, 24 July 1948

Harold G. Gillies
 HAROLD GILLIES
 Assistant Defense Counsel

CLOSING BRIEF SCHMITZ

General: The position of the defendant SCHMITZ within the IG,
his functions in German and international industry,
his political attitude and his human qualities.

The Defense for the defendant SCHMITZ finds itself in a particularly difficult situation when submitting its closing brief, in as far as it has not been able, according to what it considered to be its duty, to put the defendant in the witness stand, in consideration of his state of health, and this action is also recognized as justified by the American doctors. The Defense therefore had to forgo the most important means of giving the court an impression of the personality of the defendant, of his positions and functions. We therefore consider it necessary to submit at the beginning a short descriptive summary of the position held by the defendant SCHMITZ within the IG, his functions in German and international industry, his political attitude, as well as to present a picture of SCHMITZ as a man, as it emerges from the evidence on hand.

1. SCHMITZ' position as chairman of the Vorstand.

According to the Prosecution's own submission (Exh. 330, NI-5184, Book 12, Engl.p. 91, Germ. p. 75) the IG Farbenindustrie, considering the two possibilities which the German stock laws as from 1938 provided for the position of a chairman of the Vorstand, i.e. the so-called Fuehrer principle on the one hand, which reserves for the chairman the right to ^{exert} supreme and decisive influence

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on the management of the enterprise, and on the other hand the position of a primus inter pares, which practically limits the chairman to representative functions, decided in favor of the second possibility (see also testimony ter MEER, on 11 February 1948, Engl. tr. p. 6762, Germ. p. 6888).

As can be seen from the statutes of the IG (par. 11, figure 3) from 1938 (Exh. 340, NI-8935, Book 12, Engl. p. 187, Germ. p. 169) as well as from the laws and regulations governing the Vorstand, paragraph 6, (Exh. 337, NI-8934, Book 12, Engl. p. 177, Germ. p. 157), the vote of the chairman is only decisive if, when a vote is taken, there are an equal number of votes on each side. As is already stated in the introductory sentence of the latter regulation, efforts were made to avoid on the whole any decision by a majority of votes in the management of the IG and to reach a decision approved by all members of the Vorstand. Many of the defendants confirmed in the witness stand that in practice formal votes were hardly ever taken to decide between two contradictory opinions, because even in cases where the law expressly rules that votes must be taken, there was always unanimous approval of the decisions reached.

(See in this connection among other things the testimony made by ter MEER on 11 February 1948, Engl. tr. p. 6764, Germ. tr. p. 6890 and testimony v. KNIERIEM on 10 February 1948, Engl. tr. p. 6714, Germ. tr. p. 6837, who confirmed in reply to judge HEBERT's question that he could not remember a formal vote ever having been taken:

"There may perhaps have been an exception. We may have once done it, when the contract between IG Farben and IG Chemie Basel was dissolved. But I am not quite sure about that.)

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The Prosecution does not assert, and it actually never happened on any occasion that the decisive character of the chairman's vote gained any practical significance when the number of votes was equal on both sides. The special functions ascribed to the position of the chairman were therefore of a formal, or more correctly, of a representative nature in the case of the IG. The chairman presided over the conferences of the Vorstand and the Central Committee; he acted as spokesman of the Vorstand in the Aufsichtsrat and the general meeting, as well as being to a certain extent the representative of the enterprise in dealing with the public, but this did not change the fact that the viewpoint of the Vorstand which he represented was ascertained according to the democratic principles decisive for the formation of the opinion of the Vorstand; the chairman then had to act as the mouthpiece of the Vorstand. Neither the German stock law, which mentions the position of the chairman of the Vorstand in Par. 70, nor the statutes of the IG nor the laws and regulations governing the Vorstand - which on the contrary defines in detail the competence of the Central Committee - deal elsewhere with the special functions of the chairman of the Vorstand. The position of the chairman was therefore governed rather by practical dealings than by legal regulations. This position depended entirely on the strength of the individual chairman's personality and his special tasks within the IG.

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Numerous exhibits both of the Prosecution and the Defense show the outstanding position of Geheimrat BOSCH within IG, which was maintained even after his designation as chairman of the Vorstand. This position, however, was by no means the automatic consequence of his office as chairman of the Vorstand, but was due to his practical scientific achievements and excellent human qualities.

Prosecution exhibit 334 (NI-5187, Book 12, Engl. p. 126, Germ. p. 107) contains among other things an appendix to the so-called jobsheets, prepared in 1945/46 by a few Vorstand members interned in Cransberg, wherein they give the following opinion on the tasks of the Vorstand chairman (Engl. p. 136, Germ. p. 134/135):

"The chairman of the Vorstand had the task of ensuring the smooth cooperation between the individual Vorstand members, at the same time maintaining a high degree of independence of the individual section (Sparte) - factory combine - and sales combine - leaders. The above gives an indication of the special functions of the chairman of the Vorstand, Geheimrat SCHMITZ:

- 1.) General supervision of the activity of the Vorstand members through personal contact with the individual members, and regular attendance at a number of Committee and Commission meetings; thus Geheimrat (Privy Councillor) SCHMITZ, besides presiding over the Central Committee conferences, regularly attended the meetings of the Commercial and the Technical Ausschuss. Geheimrat Schmitz received the records of all important Committees and Commissions.
- 2.) General protection and presentation of Konzern interests within the IG Konzern itself and in relation to other Konzerne.
- 3.) Cooperation with the chairman of the Aufsichtsrat and the working committee of the Aufsichtsrat (personnel committee) assigned for this purpose according to statute,

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when appointing Aufsichtsrat members (through a general meeting) and Vorstands members (through the Aufsichtsrat); in regard to the latter, the Central Committee formerly participated in consultations. Beside having these functions, Geheimrat SCHMITZ was also the main administrator of the finance and balance sector."

The context shows clearly that the enumerated special functions of the chairman of the Vorstand must always be viewed from this angle and within the confines of his special tasks as listed in the above paragraph. Thus, if these gentlemen describe the "general supervision" of the activity of the Vorstand members as one of the chairman's functions, it is necessary to give a clarifying explanation in order to avoid errors. It is out of the question that it was the chairman's job to check up on the business methods of his colleagues in the Vorstand, either regularly or only from time to time, in such a way as to enable him to form an independent judgment as to the correctness of their business conduct. Such an assignment, quite apart from the fact that time alone would never have permitted it in view of the size of the IG Vorstand and the vastness of the sphere of work of each individual Vorstand member, would have made the chairman the superior of his colleagues, which would thus have been absolutely contrary to the democratic principle of primus inter pares as pursued by the IG. In fact, the report, by proscribing the means for the "General Supervision", namely

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"personal contact with the individual (Vorstand members) and regular attendance at a number of Committee and Commission meetings" manifests clearly what is meant by this "general supervision". Because neither personal talks with the Vorstand members, nor the committee and commission meetings would have offered the chairman - and the same applied to all the other Vorstand members - an opportunity to check up individually on the correctness of his colleagues' activity, especially as it is beyond doubt that none of the Vorstand members would have brought up or even hinted at a possible irregularity in his report. The only thing for which this personal contact and participation in the various meetings could have been instrumental and which consequently had to be regarded as sole intent and purpose of the "General Supervision" was the job of forming and obtaining a general survey over the total development of the concern, and thus to ensure that the activity of the individual Vorstand member was organically in line with IG general business policy; apart from that, it would, in the first place, have been the obvious thing for a Vorstand member who entertained doubts about the business conduct of a colleague, to talk about this to the chairman of a Central Committee member with special knowledge

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of the respective colleague's field of work; this person would then, in a concrete case of this type, have been obliged to take action without further authorization, in order to initiate first an investigation and - if necessary - measures which the Vorstand as a whole would decide upon.

This coordinates the chairman's supervisory duty with his general supervisory duties, which, according to German stock company law is incumbent upon every Vorstand member where business outside his own sphere is concerned. Details on the kind and scope of this supervisory duty are given in the legal opinions submitted by Dr. Walter SCHMIDT (Defense Exh. 280, Knieriem Doc. 39, suppl. vol. Knieriem) and Prof. Dr. Edmund MEZGER (Defense Exh. 281, Knieriem Doc. 40, suppl. vol. Knieriem), which were introduced by the Defense in connection with the subject of "General Responsibility of the Vorstand". Specific reference is hereby made to their statements on this question. In addition we refer to the testimony of the defendant KUEHNE in the witness stand on 31 March 1948 (Engl. tr. p. 10223, Germ. tr. p. 10359), wherein he expressed quite bluntly that he would never have tolerated supervision in a wider sense, and a consequent interference by the chairman in his rights and tasks as factory manager. This testimony of the defendant KUEHNE is confirmed in principle by the defendant ter MEER, who in the witness stand on 11 February

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1948 describes the relationship between himself as chairman of the Technical Committee and his technological colleagues as quite similar to that of a primus inter pares, whereupon he continues:

"Q. So that as Chairman of the TRA, you were not a superior of your other Vorstand colleagues?

A. No, I was not the superior of my other Vorstand colleagues. I want to generalize this point. That did not exist because one Vorstand member was never the superior or subordinate of any other Vorstand member. That was not customary."

(Engl. tr. p. 6779, Germ. tr. p. 6904-05)

This fact, moreover, follows naturally from the structure of the Vorstand. It is impossible to place one member of a board whose decisions are based on majority votes above the rest of the members with equal rights, as this function of superiority could have been rendered illusive in each concrete individual case through majority votes. Thus the unsubstantiated testimony which the defendant AMEROS, a Vorstand member only since 1938, gives in his affidavit of 29 April 1947 (Exh. 1419, NI-9542, Book 72, Engl. p. 47, Germ. p. 80) is not a correct reconstruction of the actual relationships. This moreover follows again from the affidavit of the defendant ter MEER of 29 April 1947 (Exh. 330, NI-5134, Book 12, Engl. p. 91, Germ. p. 75) wherein ter MEER explicitly states that SCHMITZ had no authority to go against a Vorstand majority. (Engl. p. 104, Germ. p. 86). In other words, he could

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not by himself constitute a majority, though he could always be outvoted in the Vorstand. It has already been said that these questions never became a practical issue.

Finally I must emphasize in this connection that in I.G. each Vorstand member had unusually far-reaching powers for his own sphere of work. This fact was emphatically confirmed not only by almost all the Vorstand members on trial (see also testimony TER MEER of 11 February 1948, English transcript 6764, German transcript page 6890, HOERLEIN of 2 February 1948, English transcript page 6203, German transcript page 6260, and especially his testimony of 3 February 1948, English transcript page 6275, German transcript page 6332:

"The I.G. was in fact no inanimate formation, but consisted of a circle of men who were capable of and willing to shoulder their own responsibility".

Affidavit KNIERIEM of 31 March 1948, defense exhibit 170, KNIERIEM document 34, KNIERIEM document book V, page 292), but also by those former Vorstand colleagues who are not on trial. (See Affidavit Dr. JACOBI dated 24 January 1948, Defense Exh. 171, KNIERIEM document 35, KNIERIEM Document Book V, page 307, Affidavit Dr. PISTOR of 9 February 1948, OSTER Exh. 19, OSTER Doc. 16, OSTER Doc. Book I, page 42).

I refer to above testimonies and especially the affidavit of Dr. JACOBI and Dr. PISTOR also for the actual procedure of mutual supervision by the Vorstand members, the legal side of which was

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exhaustively dealt with in the above-mentioned legal opinions of Professor MEZGER and Dr. Walter SCHMIDT.

The natural counterpart of the vast independence within his own sphere of work was restraint concerning the domains of the other Vorstand members, a quality which was generally expected and found. In his affidavit of 29 April 1947 (Exh. 330, NI-5184, Book 12, Engl. p. 91, Germ. p. 75), the defendant ter MEER underlines this fact, and says (Engl. p. 101, Germ. p. 83):

"..... whilst I would not under any circumstances permit our business experts to concern themselves with technological matters."

Ter MEER goes on to describe, how the concrete case he is relating was settled, and follows it up with this general remark:

"This shows that each Vorstand member tried to keep within the limits of his own sphere of work, and to avoid overlapping of interests. Apart from this, the personal relations between the various Vorstand members and of course become very good, due to long years of teamwork, and difficulties were easily straightened out without formalities."

I must also point out here that the tasks of the individual Vorstand members, especially in the technical field and the extremely difficult social-legislative issues, required highly specialized studies of the material, or technical knowledge and experience, such as the defendant SCHMITZ at least lacked, so that for this

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reason alone he would not have been in a position to check up on the business conduct of his colleagues. This view seems especially evident in connection with SCHMITZ's attendance at the committee and commission conferences. In his affidavit of 29 April 1947 (Exh. 330, NI-5184, Book 12, Engl. p. 91, Germ. p. 74) the defendant ter MEER says the following concerning the participation of the defendant SCHMITZ in the conferences of the Technical Committee:

"Schmitz usually participated in the meetings of the Technical Ausschuss. However, I cannot circumscribe his position within the Technical Committee better than by saying that he listened to the reports and discussions brought up in the meetings of the Technical Ausschuss. As he was not a technologist, he was not in a position to take a hand in research and technological questions. His main reason for attending the meetings of the Technical Ausschuss was that these technical committees offered him, in his position as the chief financier of the IG, the best opportunity of gaining an insight into questions of credit grants and monthly utilization of these credits."

(Engl. p. 106, Germ. p. 86)

The great extent to which professional qualifications and individual sphere of work of an individual chairman affected his position within IG, is shown in the statements of ter MEER in the same affidavit under the subject of the Central Committee. He points out that - when Dr. SCHMITZ succeeded Dr. BOSCH as chairman of the Vorstand - the function of the Central Committee at once underwent a substantial change,

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SCHMITZ being a financier and not a technologist. Fundamental questions of technology and business were dealt with in decreasing number by the Central Committee, whilst Dr. BOSCH, on the other hand, at the same time established his "Heidelberg Conferences" with leading IG technologists, in order to continue to participate in IG research work and technical progress; this was one of the basic reasons why the Central Committee ceased to occupy itself with technical matters (Engl. p. 95, Germ. p. 78).

Regarding the organization and character of the Commercial Committee, at whose meetings the defendant SCHMITZ usually also attended, - although as the transcripts show, only during part of same, or during the discussion of certain items on the agenda - reference is made to the affidavit of Dr. KRUBER dated 14 December 1947 (Oster exh. 20, Oster Dec. 18, Oster doc. book I, page 48). The witness states that this committee did not have executive powers within IG, but was merely an instrument of mutual instruction and consultation, and that it was impossible to restrict one of the participants by majority vote. This also characterized the relationship existing between the defendant SCHMITZ and this board.

(On the significance of the Commercial Committee see also the testimony of the defendant HAEFLIGER of 15 March 1948, Engl. tr. p. 9100, Germ. tr. p. 9198, ILGNER of 18 March 1948, Engl. tr. p. 9504, Germ. tr. p. 9616, MANN of 31 March 1948, Engl. tr. p. 10298, Germ. tr. p. 10432.)

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With regard to the manner in which SCHMITZ carried out his activities as Vorsitz, reference is made to the affidavit by the witness Dr. KRUEGER, given on 8 April 1948 (Schmitz Exh. 101, Schmitz Doc. Book 108, Suppl. vol. to Doc. Book Schmitz V, page 1) as well as to the explanations and additional information which he gave during his cross-examination on 9 April 1948 (Engl. tr. p. 11128, Germ. tr. p. 11178, in particular Engl. tr. p. 11146, Germ. tr. p. 11196).

The latter statement in particular reveals the close working and personal contact which existed between the witness and the defendant SCHMITZ, and therewith his factual qualification for making his statements. The fact that Schmitz did "not" actually "govern the proceedings" in the Vorstand, as the witness KRIEGER expresses it, but in reality allowed the competent and therefore expert members to hold complete sway in all matters, is shown by the affidavit by ter MEER dated 29 April 1947 (Exh. 330, NI-5184, Book 12, Engl. p. 91, Germ. p. 75). Although it was formally the function of the Chairman of the Vorstand to cooperate with the Chairman of the Aufsichtsrat and its personnel committee when appointing members of the Vorstand and of the Aufsichtsrat, this statement by the defendant ter MEER shows quite clearly that as the leading technician and therefore expert member of the Vorstand, he took the initiative in questions concerning the appointment of new, technical members of the Vorstand, such as FURSTER, AMBROS and MUELLER-CONRADI; furthermore it shows

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that SCHMITZ as well as the other parties involved agreed to his proposals. With regard to the elections for the Aufsichtsrat, the witness for MEER states loco citato:

"Prior to the shareholders annual meeting, nominees for election into the Aufsichtsrat were freely discussed between the leading personalities of the Aufsichtsrat and of the Vorstand and the Chairman of the Aufsichtsrat."

(Engl. p. 112, Germ. p. 34.)

2. SCHMITZ' own sphere of competence within the IG Vorstand:
Chief administration with regard to financial and book-
keeping matters.

That reason alone makes it imperative to set limits to the supervisory duties of the Chairman of the Vorstand in a sensible and practical manner according to the very restricted sense described above, is most clearly explained by the fact that in addition to his tasks as chairman, the defendant SCHMITZ was also responsible for his own extremely important sphere of tasks which engaged him in a great deal of effort, so that he most certainly did not have sufficient time and energy left to concern himself further and in detail with the spheres of work of his colleagues in the Vorstand. SCHMITZ' own sphere of tasks comprised the organization of the financial structure of the IG Konzern, and the direction of the Konzern's general finances, in other words, he was in charge of the main administration relating to matters of finance and book-keeping. SCHMITZ accepted full responsibility for all procedures in this sphere of tasks and was fully competent in this respect. However, in order that

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his tasks may be revealed in their proper light, reference is again made to the fact that his responsibility for the main administration in this sphere also made him responsible for the entire financial situation of the concern, and for working out the main principles of the IG's financial policy; on the other hand, he was not responsible or competent with regard to the executive in details of financial measures and furthermore it was not his task to supervise in detail the financial movements of the IG and the companies belonging to the Konzern, since large independent departments had been formed for this purpose within the IG. Thus, for example, the affidavit given on 31 March 1948 by Paul DENCKER (Schmitz Exh. 102, Schmidt Doc. Book 109, Suppl. Vol. to Schmitz Doc. Book V, p. 4) clearly illustrated that the balance sheet audit reports were not, in general, sent for the purpose of including Geheimrat SCHMITZ in the supervision of the detailed financial movements of the Konzern's companies, but for the purpose of allowing him a general survey of the financial situation with regard to the individual Konzern enterprises, and therefore the whole Konzern. This he received by means of the summarized report made by Herrn Dencker on the main contents of the balance sheet audit reports which - as confirmed by the witness - sufficed for a general survey; while the audit reports despatched in like manner and which in part were very detailed, were to be used as reference in all occasion arose where more precise details had to be established.

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Finally to round off the picture, reference is made to the statement of the defendant v. KNIERIM dated 5 February 1948 (Engl. tr. 6488 and 6493, Germ. tr. p. 6540 and 6544) regarding his own cooperation in the field of financial matters and balance sheets. When assessing this special sphere of tasks attended to by SCHMITZ, particular significance attaches to the affidavit by ABS dated 14 March 1948 (Schmitz Exh. 72, Schmitz Dec. 72, Schmitz Dec. Book V, p. 1) which illustrates the extent and significance of Schmitz' tasks as well as the spirit in which he ^{and} jointed their execution.

3. The Vorstand in relation to the Administrative Council of the IG (until 1938)

In order to judge the position of the Vorstand correctly and thus also that of the Chairman, it is necessary to take a brief survey of the IG Administrative Council which existed until 1938 and the company statutes of the IG which have been introduced by the Prosecution as Exh. 335 (NI-5178, Book 12, Engl. p. 168, Germ. p. 146). These statutes only reveal part of the influence exerted by this Gremium on the business policy of the IG. In order to estimate its real significance, it must be pointed out that in this Gremium, those leading personalities of the promoting firms of the IG were united, who had been instrumental in forming this amalgamation of the IG and who also exerted a decisive influence on the IG's business policy after the amalgamation had taken place.

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Personalities such as DUISBERG, BOSCH (who at first participated in the Administrative Council conferences as Chairman of the Vorstand and who belonged to this council after he joined the Aufsichtsrat), the brothers WEINBERG, FLIENINGER, HABUSER, OFFENHEIM, KALLE were recognized all over the world as being the leading brains of the German chemical industry and it is obvious that the influence of these outstanding personalities of IG gave it its distinguishing characteristics, although legally they were not formal members of the management of the enterprise but belonged to a supervisory body. It should be mentioned that according to its statutes the Administrative Council also had to approve all credits amounting to more than RM 100,000 and thus were always able to exert direct influence on the business policy. The witness BUECHER, who for a while occupied the position of collaborator with IG and who by reason of his close personal friendship with BOSCH must be acknowledged as being particularly well informed of the circumstances, states the following in this connection on page 35 of his affidavit given on 16 December 1947 (Schmitz Exh. 6, Schmitz Doc. 6, Schmitz Doc. Book I, page 21):

"In these decisive years, 1928-1934, Carl BOSCH and DUISBERG, together with the above mentioned members of the Administrative Council in the IG Farbenindustrie A.G. bore the entire responsibility for this enterprise - the main responsibility resting with Carl BOSCH."

With reference to the defendant he continues on page 36:

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"However, during the time when the most important decisions were made in the IG and the firm was still able to decide on its own, they (the defendants) had no decisive influence on the course of events."

The witness KALLE in his affidavit dated 8 September 1944 (Schmitz Exh. 4, Schmitz doc. 4, Schmitz doc. book I, p. 1) and dated 4 October 1947 (Schmitz exh. 5, Schmitz Doc. 5, Schmitz Doc. Book I, p. 8) also made a statement on the political and social-political committees, which were to be considered as committees of the Verwaltungsrat, described their principles and stressed their significance. The term "Council of the Goods" which in the IG was frequently applied to the Verwaltungsrat, is perhaps the best way of distinguishing the actual importance ascribed to this gremium.

4. Other positions held by SCHMITZ in German industry,

In the same way as almost all the members of the Vorstand and especially the older ones, the defendant SCHMITZ was also chairman or member of a number of Aufsichtsräte in Konzern companies for the purpose of looking after and guiding the interests of the Konzern in general (see pl 4 figure 2 of this final plea). In addition he was member of the Aufsichtsrat of several well-known German industrial enterprises. In as far as companies of the IG Konzern were involved, SCHMITZ acted in these companies as representative of the financial interests of the

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IG, whilst the technical or commercial interests were taken care of by other members of the Vorstand, in whose sphere of tasks the companies concerned were included.

The international reputation, which the defendant SCHMITZ enjoyed as a financier, was also the reason that leading German enterprises, such as the Deutsche Bank, the largest German Insurance Company "Allianz", the Vereinigte Stahlwerke where he had also to look after the interests of the Rheinische Stahlwerke - and other firms, considered it important to procure his advice and at the same time to establish through his person a business connection with the IG, which was visible to outsiders.

The same reasons were decisive for the fact that SCHMITZ was asked for his advice by official authorities, on economic and financial questions. As early as in 1929, SCHMITZ, at the instigation of HILFERDING, the Minister of Finance at the time, and a socialdemocrat, was appointed member of the Verwaltungsrat of the German Reich Railroads, and continued as such up to 1930. In 1931 at the request of the former Reich Chancellor BRUNING, he acted as financial consultant to the delegation at the World Economic Conference in London (see testimony ILGNET, 17 March 1948, Engl. tr. p. 9490, Germ. tr. p. 9602) and in the same year became a member of the economic advisory council of the Reich government, which had been established by Reich President von HINDENBURG. He was a member of the advisory council of the Deutsche Reichsbank, which had been newly created in July 1938, and became.

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chairman of the Currency Commission, which however had held no meetings. In respect of the significance of these two latter offices, I should like to refer to the affidavit ABS, dated 14 March 1948 (Schmitz Exh. 72, Schmitz Doc. 72, Schmitz Doc. Book V, p. 1).

5. SCHMITZ' position in International Economy and his attitude towards International Economic Cooperation.

In 1939, SCHMITZ being the representative of German industry, was appointed member of the Verwaltungsrat of the Bank of International Settlements (BIZ) in Basle.

(With reference to SCHMITZ' inner attitude which prompted him to accept this office, see affidavit WARMBOLD dated 5 October 1947, Schmitz exh. 45, Schmitz Doc. 45, Schmitz Doc. Book IV, p. 4).

This position and many others which he held and which for the greater part have been correctly described in the affidavit by Paula ESTER dated 15 February 1947 (Exh. 316, MI-5136, Book 11, Engl. p. 182, Germ. p. 208) were to serve the purpose of utilizing SCHMITZ' recognized authority as financier, for the benefit of German and international economy. The fact that he always concentrated on his actual sphere of work, i.e. financial matters which fully absorbed his interests, is shown by the affidavit by Wilhelm ZANGEN, dated 5 March 1946 (Schmitz Exh. 96, Schmitz Doc. 96, Schmitz Doc. Book V, p. 85), where the witness comments on Schmitz' activity

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in the inner advisory council of the Reich Group Industry.

The greater part of the defendant SCHMITZ' energy was taken up by his activities in international economic organizations, first and foremost by his position as president of the European Nitrogen-Convention, which may be considered as being his own creation and which served as a model for world-wide collaboration in a certain type of industry. This industry not only served the rightful interests of all producers but also those of the consumer and created orderly and sound conditions in a field most decisive and important for the nutrition of the entire world. Concerning the importance of the European Nitrogen-Convention and its activity, I should like to refer to the testimony of the defendant Dr. OSTER, given on 7 April 1948 (Engl. tr. p. 10715, Germ. tr. p. 10859) and to his affidavit dated 23 March 1948, as well as to the affidavit by Professor WARBOLD, dated 5 October 1947 (Schmitz Exh. 45, Schmitz Doc. 45, Schmitz Doc. Book IV, p. 4).

The spirit prevailing over the work of the European Nitrogen-Convention is illustrated by the affidavit dated 3 February 1948 given by Vladimir SCHAEITZEL, who was the representative of the Polish nitrogen industry in the C.I.A. (Compagnie Internationale de l'Industrie de l'Azote S.A. Paris), (Oster Exh. 37, Oster Doc. 35, Oster Doc. Book II, p. 20). The witness, who stressed the fact that the defendant SCHMITZ was the president

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of this organization, states:

"The policy of the C.I.A. was determined by the decisions of the supervisory council and the collaboration between all delegates during the 8 years of existence of the C.I.A. was most loyal and cordial."

In his affidavit the French representative Monsieur L. Lheure made a statement to the same effect (Oster Exh. 42, Oster Doc. 32, Oster Doc. Book II, p. 15). I should also like to refer to the affidavit BECKER dated 2 February 1948 (Oster Exh. 23, Oster Doc. 29, Oster Doc. Book I, p. 62) regarding the composition payment to the firm Ressaix-Leval, which is not only characteristic of the basic attitude of the C.I.A. which was governed by the spirit of goodwill towards international collaboration, but at the same time also proves clearly that even in 1938 the German representatives in the C.I.A. still did not believe in the possibility of a war.

The fact that SCHMITZ was requested each year to act as chairman of this international economic organization, from the time of its foundation up to 1938, is a sign of the trust placed in him by all countries concerned.

In addition he devoted his special interest and a considerable part of his work to foreign companies closely connected with the IG, such as the Internationale Gesellschaft der Stickstoffproduktion, Basle, the Internationale Gesellschaft fuer Chemische Unternehmungen (IG Chemie) Basle, the American IG Chemical Corporation, of which SCHMITZ was president or rather chairman of the Verwaltungsrat for many years.

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(If the Prosecution makes the assertion in appendix A of the Indictment and recurring in the case of almost every defendant, namely that SCHMITZ had been chairman or member of the administration in other industrial firms, concerns and enterprises in the occupied territories, it must be stated in order to clarify matters, that in this connection SCHMITZ only belonged to the Styro of the Norsk Hydro, and moreover from 1927 onwards; that on the other hand, he did not accept any offices in industrial enterprises of foreign countries during the time of the German occupation.)

6. SCHMITZ' political attitude especially his relationship with the Third Reich.

SCHMITZ did not take any interest in political questions and especially party politics, also he lacked any power of political judgment.

(See in this respect the affidavit given by Prof. DRABOLD dated 5 October 1947, Schmitz Exh. 45, Schmitz Doc. 45, Schmitz Doc. Book IV, p. 4 and Prof. HUMMEL's affidavit dated 26 March 1948, Schmitz exh. 75, Schmitz Doc. Book V, p. 24).

In his outlook SCHMITZ was anything but a radical and always adhered to a conservative policy. His close friendship with Geheimrat BOSCH, which was confirmed by many witnesses (see affidavits Dr. BUCHER, dated 16 December 1947, Schmitz exhibit 6, Schmitz doc. 6, Schmitz Doc. Book I, p. 21, Freiherr von LERSNER, dated 6 October 1947, Schmitz Exh. 44, Schmitz Doc. 44, Schmitz Doc. Book IV, p. 1, Dr. KALLE, dated 4 October 1947, Schmitz Exh. 5, Schmitz doc. 5, Schmitz Doc. Book I, p. 8) implies that agreement was reached with regard to political principles too, and this is also confirmed by these witnesses.

Over and beyond this, the witnesses LAMERS, KASTE and v. RAUMER made detailed statements on this question.

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During his interrogation on 21 January 1948, (English transcript, page 5711, German transcript, pages 5750/51) the witness Kastl confirmed that Schmitz took very little interest in politics and continues:

"but Mr. Schmitz was more inclined to the left than to the right. His friend, and I might say his political mentor, was Mr. von MOELLENDORF, the well known plant economist who has died in the meantime, and he certainly tended towards the left. (N.B. Moellendorf was secretary of state in the Reich Ministry of Economy under the Social Democratic Minister Wissel).
"Mr. Schmitz always advocated collaboration with labor and union representatives and with all foreign countries."

On page 5752 of the German transcript (English transcript page 5713) the witness continues:

"In the years from 1920 to 1933 I repeatedly talked to Mr. Schmitz about political questions, especially from 1929 to 1932 or 1933 when National Socialism was becoming stronger and more influential. I found that Mr. Schmitz was definitely opposed to it. His innermost attitude would have forbidden him to take any approving attitude here."

On page 5765 of the German transcript (English transcript, page 5726) the witness reports on Schmitz's attitude towards the former Reich

Chancellor Bruening. In his affidavit dated 5 October 1947, (Schmitz exh. 23, Schmitz doc. 23, Schmitz doc. book II, page 31) the witness Warmbold describes his collaboration in Bruening's cabinet which was due to the defendant Schmitz's initiative. It is evident from this that Bruening consulted Schmitz on the formation of his cabinet, which specially shows up the relations of confidence between Schmitz and the former Reich Chancellor.

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(Re the question of the defendant Schmitz's political attitude reference is furthermore made to the statements made by von Raumer on 20 January 1948, English transcript page 5695, German transcript, page 5734; Lemmers on 20 January 1948, English transcript, pages 5650/51, German transcript, pages 5689/90; Adolf Friedrich Duke of Mecklenburg on 22 January 1948, English transcript, page 9787, German transcript, page 9918; as well as the affidavit by Wilhelm von FLUEGGE, dated 16 March 1948, Schmitz exn. no. 74, Schmitz doc. no. 74, Schmitz doc. book V, page 20, from which it may be seen that all persons who were on cordial terms with Schmitz and had some influence on his actions and thoughts were outspoken opponents of National Socialism.)

Due to his especially good knowledge of the defendant Schmitz, based on a doctor's ability to think himself into the other person's situation, his personal physician for a number of years, Dr. Heinrich SINGER, states the following on Schmitz's attitude towards National Socialism in his affidavit, dated 21 March 1948, (Schmitz exn. 73, Schmitz doc. 73, Schmitz doc. book V, page 13),

"In numerous confidential conversations he (Schmitz) revealed to me his innermost feelings and strengthened my conviction drawn from the knowledge of his career, that Hitler's emotional conceptions and measures were diametrically contrary to his principles and ideas and caused him a moral revulsion. Rarely have I seen a person in such a shaken state of mind as Herr Schmitz was on the morning following the burning of the Jewish synagogues in November 1938."

(Pages 14/15)

Only those persons who actually lived in Germany in the years 1933 to 1945 are able to judge properly how difficult it was for a man in a position as exposed as Schmitz's to steer clear of Party membership, for which he was constantly approached.

The witness ABS specially emphasises the fact that Schmitz was not a member of the Party

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and, pointing out his own bad experiences, he explains how great the difficulties in the Third Reich were for a man of Schmitz's personality with his far-reaching personal and business connections in all foreign countries, especially as Schmitz tried again and again, and with success, to keep the I.G. away from the party influence and particularly to prevent outspoken party members from invading the I.G.'s administrative agencies.

(In this connection reference is made to statements by Dr. Frank-Fahle on 22 March 1948, English transcript, page 9802, German transcript, page 9934; as well as the affidavits by Baessler, dated 14 November 1947, Schmitz exhibits 31 and 32, Schmitz doc., 31 and 32, Schmitz doc. book II, pages 67, resp. 69, which show that from 1933 onward nobody was elected either to the Vorstand or to the Aufsichtsrat who could be regarded as an outsider representing the NSDAP., while as late as 1935 a Jew was elected to the Aufsichtsrat).

The fact that efforts were actually made by interested party circles to get outspoken party representatives into the I.G. administrative agencies is proven a.o. by the statements of the defendant Krauch on 13 January 1948 on the efforts of Gaulditer Sprenger in that direction, as well as on a similar attempt which was initiated by the Secretary of State of that time at the Reich Ministry of Economy, Brinkmann and turned down by Schmitz (English transcript, pages 5154 to 5156, German transcript, pages 5178/79). The fact that none of the members of the Vorstand, and especially the defendant Schmitz, were regarded as proper National-Socialists by the leading National-Socialists is proven by Krauch's statement on 16 January 1948 (English transcript, pages 5380/81, German transcript page 5409) about

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a conversation with Gauleiter Buerkel during which the latter said the following:

"He said that there was not a single Nazi in the entire administration of Farben who was really in favor of National Socialism."

Under those circumstances it must appear understandable when Schmitz could not, in view of the magnitude and the significance of the interests entrusted to him and also for the protection of his own person, at first reject a certain outward connection with the Third Reich and break off this connection during the further development for obvious reasons.

In connection with this there is the fact specially emphasized by the prosecution, i.e. that Schmitz had been a member of the Reichstag since 1934 (Exh. 512, NI-6713, book 25, English page 7, German page 10).

The witness Dr. Hans Globke described in his affidavit dated 26 February 1948, (Schmitz exh. 92, Schmitz doc. 92, Schmitz doc. book V, page 73) that after the institution of the one-party system in the Reichstag the NSDAP. leaders considered it advisable,

"to include in the Reich list of candidates a number of prominent personalities not belonging to the NSDAP from various groups of the population, who after the election were listed as guest-representatives (Hospitanten)."

(Page 74)

The witness confirms that Schmitz belonged to the group of people who became members of the Reichstag in that way. Actually it was only the prominent position which Schmitz held

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in Germany as well as in international industry as a financial expert, and not any personal connections to the National Socialist regime which caused the persons then in power to offer him a seat in the German Reichstag after all other parties had been liquidated.

From the letter of the chairman of the I.G. Verwaltungsrat to Schmitz, dated 13 November 1933 (Schmitz exh. 93, Schmitz doc. 93, Schmitz doc. book V, page 76) it may be seen that at that time the Verwaltungsrat agreed that Schmitz should accept the seat offered to him. At the same time this letter is significant for the attitude of the Verwaltungsrat towards internal I.G. matters, as well as for the fact that this circle, too, which was composed only of opponents to the regime, deemed it advisable for the protection of the I.G. to establish this external liaison via Schmitz, and also probably had in mind that a specialist's advice, still thought possible at that time, might be of some use for the solution of Germany's difficult economic problems, especially the solution of the unemployment problem, affecting over 6 million people.

The fact that Schmitz belonged to the Reichstag not as a National-Socialist and, therefore, not as member of the NSDAP. faction but as a guest is brought out by the Schmitz exh. 94 (Schmitz doc. 94, Schmitz doc. book V, page 78), an excerpt from the book "The

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Greater German Reichstag."

The actual lack of any significance of the Third Reich's Reichstag, which will at first be difficult to understand for a foreigner accustomed to democratic forms of government, should be a generally known fact by now. However, this is brought out clearly by the Schmitz oah. 95 (Schmitz doc. 95, Schmitz doc. book V, page 81), a circular written by the N.S. parliamentary faction leader to his members and guests, dated 8 December 1935, which shows that the deputies were not even permitted to state an opinion on the foreign political happenings and problems, a right which is considered axiomatic for every citizen of a democratic country.

The fact that the Third Reich's leading personalities did not regard Schmitz as one of them and as a National Socialist in spite of his Reichstag membership is shown by the efforts of Gauleiter Sorenger, who attempted to remove Schmitz even from the I.G. management because he personally considered him politically intolerable for National Socialism (statements Krauch, 13 January 1948, English transcript, page 5154, German transcript, page 5178).

Regarding the general attitude of the National Socialist leaders towards the I.G. and, thereby, towards Schmitz, reference is made to the statements in the closing brief under the subject, "Alliance of the I.G. with Hitler", and the evidence quoted there.

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Evidently the Prosecution also considers the fact that the defendant Schmitz was a member of the industrial committee of the Adolf-Hitler-Spende Benevolent Fund) of the German economy as from 1937 (as is apparent from Prosecution Exhibit 2305, NI-14034) as proof of his close relationship to the Third Reich. This opinion is incorrect in view of the undoubtedly compulsory character of this Fund, since - as is apparent from the above mentioned Prosecution Exhibit itself - the task of this industrial Committee was simply to supervise the raising and payment of this Fund, the control of which was in the interest of the general public. In addition this document furthermore proved that the defendant Schmitz only participated twice in meetings of the industrial committee.

Neither from his membership in the Reichstag nor from the fact that the defendant Schmitz was a military economy leader, can it be inferred that he had specially close relations to the Third Reich or close connections with the Wehrmacht. The particularly expert witness Warlimont, in his statement of 17 October 1947 (English transe. page 2313, German transe. page 2306) expressed the opinion that in regard to the Military Economy Leaders, it was merely the question of a title which was of no practical value; and that, moreover, no tasks accrued to the bearer of this distinction on account of this distinction. (As further evidence regarding this question, see affidavit by General Huenemann of 17 January 1948, Ilgner Exhibit 12, Ilgner document 12, Ilgner Document Book I, page 45, Dr. Carl Luer of 9 March 1948, Schnitzler-Exhibit 43,

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SCHNITZLER document 39, Schnitzler Document Book II page 73, and Boldt of 2 April 1948, Schnitzler Exhibit 194, Schnitzler Document 208, Schnitzler Document Book XI, page 54).

The fact that the defendant Schmitz, contrary to the allegations of the Prosecution, was not a member of a Military Economy Council (Exhibit 316, NI-5136, Book II, English trans: 182, German, page 208) is proved on the one hand by the affidavit Ester of 19 November 1947 (Schmitz Exh. 61, Schmitz Document 61, Schmitz Document Book IV, page 53) and on the other hand by their statements made when cross-examined by the Prosecution on 12 April 1948 (Engl. trans: page 11189, German page 11299). Moreover the affidavit already mentioned, which was made on 17 January 1948 by witness General Huenermann, a special expert on this question - proves (Ilgnor Exh. 12, Ilgnor Doc. 12, Ilgnor Document Book I, page 45)

that in fact no Military Economy Council existed. If, contrary to this, the Prosecution refers to its Exhibit 2306 (NI-15070), the latter only proves the intention of forming a Military Economy Council - it is well known that in the Third Reich such ideas sprang up very frequently and wilted again just as quickly; but proves nothing regarding the actual formation or the members of this organization. Compared with the very explicit statement by witness Huenermann, this exhibit becomes insignificant. If, finally, the Prosecution refers to occasional public statements in order to prove a close connection of the defendant Schmitz with the National Socialist Regime (e.g. letter of congratulation by Schmitz

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to Goering on the occasion of the 5th anniversary of his appointment as Prussian Prime Minister, Exhibit 484, NI-682, Book 22, English page 60, German, page 74, letter by Schmitz to State Secretary Posse on occasion of his appointment to Military Economy Leader, Exhibit 492, NI-533, Book 22, English page 16, German page 110, article by KRAUCH for the 60th birthday of Schmitz in the I.G.'s plant periodical, Exhibit 128, NI-1319, Book 5, English page 167, German 210, as well as affidavit by Koppler, Exhibit 59, NI-6766, Book 3, English page 127, German page 120), then it must be stated, that just for a person who rejected any spiritual ties with the regime, it was an inescapable law of self-preservation that he should mask his own reserve or even aversion as carefully as possible and should adapt his outward expressions to the usages generally accepted in Germany during those years. This applied all the more strongly if the person concerned had not only to take into account his own position, but also had to bear responsibility for important matters of general interests which were entrusted to his care.

(See also the reference made to the question of a state of emergency under count of indictment III on page 116 of the Closing Brief.)

7. Schmitz's attitude towards the Jewish question.

Special mention must be made of the attitude of the defendant Schmitz towards the Jewish question and his personal relations to Jews. In this connection reference is made to the affidavit of Count Sproti, dated 11 January 1948 (Schmitz Exhibit 53, Schmitz Document Book IV, page 32) about the relation of the defendant Schmitz to Geheimrat v. Weinberg and the effort made by Schmitz

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to protect Herr v. Weinberg, as well as to the statement made by the same witness in the witness stand on 29 April 1948 (Engl. transc. pages 12958/59 German transc. pages 13162/63, in which he explains in still greater detail the special confidential relations and the efforts made by the defendant Schmitz in the interest of his father-in-law. Furthermore reference is made to the affidavit of Dr. Krueger of 31 December 1947 (Schmitz Exhibit 51, Schmitz Document 51, Schmitz Document Book IV, page 20 and of Dr. Frank-Fahle of 2 January 1948 (Schmitz Exhibit 52, Schmitz Document 52, Schmitz Document Book IV, page 29) and furthermore to the statement of witness Krueger in the cross-examination on 9 April 1948 (especially English transc. pages 11146-11151, German transc. pages 11196-11202) in which the witness makes special mention of the efforts made by the defendant Schmitz in the interests of Messrs. von Weinberg, Oppenheim, Lederer, Flechtheim and Jacobi who had to leave Germany on account of their being Jews. Reference is also made to the above mentioned remark by Singer about the shock Schmitz received at the violent measures taken against Jewish synagogues. In the same affidavit, the witness furthermore testifies that Schmitz retained the Jewish physician Dr. Bloch as family doctor up to the time of the latter's emigration from Germany, and that in the Schmitz household he was esteemed as man no less than as physician.

(In regard to the same arguments in evidence see also affidavit by Silcher of 2 April 1948, Schmitz Exhibit 76, Schmitz Document 76, Schmitz Document Book V, page 26, and Professor Hummel of 26 March 1948, Schmitz Exhibit 75, Schmitz Document 75, Schmitz Document Book V, page 24).

The Prosecution tried to

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cast doubts on the irrefutable evidence of the Defense by submitting its Document NI-14036, Exh. 2304. As a matter of fact, this document does not contradict the evidence of the Defense. The handwritten note by Schmitz on the letter from the Reichsapothekerführer (leader of pharmaceutical chemists) of 30 April 1938, which reads: "that was the case anyhow", simply states in conformity with the facts, that it was not the intervention on the part of the defendant Mann and thus not an act carried out by the I.G. on their own initiative, which led to the retirement of the Jewish members of the Aufsichtsrat, since they had already made their decision when the defendant Mann was approached in this question by the Leader of pharmaceutical chemists. Therefore this document does not prove anything in regard to the way in which their retirement was effected, and above all in regard to the question as to whether pressure was brought to bear on these particular gentlemen on the part of the I.G. management. On the other hand it has been clearly proved by witness Sprei in his cross-examination by the Prosecution and in the subsequent re-examination by the Defense, that for instance Geheimrat Arthur von Weinberg - in consideration of the fate of the I.G. and of his own person - decided of his own accord to retire from the Aufsichtsrat of the I.G. (English trans. page 12958, German page 13161). The same applies to the remaining gentlemen. It is typical of the Prosecution's argumentation, for them to have misrepresented the facts, and thus to have arrived at the conclusion in the index to Document NI-14036, Exhibit 2304:

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".... with a notation by the defendant SCHMITZ in his own handwriting that he had already taken action without any prompting by the Reich official sending the letter."

In reality it is out of the question that this notation by the defendant SCHMITZ ^{should of} admit any conclusion that he had taken the initiative.

In his examination Graf SPRETI furthermore confirmed, as the witness Dr. KRIEGER had done on 9 April 1948 (Engl. tr. p. 11147/48, Germ. tr. p. 11198/99) that it was an absolutely unusual fact which was much discussed in Germany that a larger number of Jewish members of the Aufsichtsrat belonged to the IG Farbenindustrie right up to 1938. The fact that the man concerned did not retire from the Aufsichtsrat of the IG until 1938, is proved by the minutes of the meeting of the IG Vorstand on 28 May 1938 (Schmitz Evidence 111, Schmitz Doc. 111, Suppl. to Doc. Book Schmitz V). Furthermore it is proved by the statement from the witness KRIEGER on 9 April 1948, in particular by his replies during cross-examination (Engl. tr. p. 11147-11149, Germ. tr. p. 11198/99), that it is wrong to speak of a policy of the IG in these questions - as was done by the Prosecutor - since the IG tried to resist the policy of the National Socialist leadership as long as possible and was only obliged to yield reluctantly when there was no other way left, and clear legal regulations (Evidence 2249, NI-15171, Rebuttal

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Doc. Book 94, Engl. p. 78, Germ. p. 83) had introduced compulsion which permitted of no further evasion.

8. The man SCHMITZ.

The illustration of defendant SCHMITZ' personality would be incomplete without a short description of his human qualities and his general attitude. In this connection reference is made first of all to the affidavit by Dr. SINGER of 21 March 1948 (Schmitz Evidence 73, Schmitz Doc. 73, Schmitz Doc. Book V, p. 13). One of the most outstanding characteristics of the defendant SCHMITZ is his proverbial kindness, emanating from a warm human sympathy and expressing itself only in never ending readiness to help. See in this connection Schmitz evidence 62-71 (Schmitz documents 62-71, Schmitz Doc. Book IV, p. 55-96) concerning the social establishments endowed by Schmitz, and further Dr. FRENTZEL's affidavit of 17 March 1948 (Schmitz Evidence 99, Schmitz Doc. 99, Schmitz Doc. Book V, p. 92) which shows that during the war SCHMITZ dedicated practically his whole net income to social purposes, especially to the assistance of war widows and orphans. Furthermore there is Dr. WEISS' affidavit of 11 December 1947 (Schmitz Evidence 47, Schmitz Doc. 47, Schmitz Doc. Book IV, p. 100) concerning his personal

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cooperation in the field of social welfare. This is also expressly confirmed by the defendant SCHNEIDER in his examination on 20 February 1948 (Engl. tr. p. 7454/55, Germ. tr. p. 7514/15):

"Mr. Schmitz always was ready to accept any social suggestion for Farben. Mr. Schmitz was also the initiator of the considerably large contributions that Farben made for the old age pension funds of their workers and employees."

(In this respect see also the affidavit by WEISS of 22 January 1948, (Schmitz Evidence 91, Schmitz Doc. 91, Schmitz Doc. Book V, p. 68) on the Hermann SCHMITZ endowment established by the IG and its beneficial activity in the sphere of social welfare, and further the statements by the same witness during interrogation on 25 February (Engl. tr. p. 7640/49, Germ. tr. p. 7716-7718). Lastly it may be mentioned that the defendant Schmitz sent his allowance as member of the Reichstag from 1933 onwards in equal shares to the German Red Cross and the Winter Relief Work (Evidence 316, NI-5136, Book 11, Engl. p. 182, Germ. p. 208).

In cross-examining the witness ESTER on 12 April 1948, the Prosecution tried to prove that the defendant SCHMITZ had personally paid sums to officials of the National Socialist Party (Engl. tr. p. 11184/85, Germ. tr. p. 11292/93). In fact, however, the statements by the witness ESTER proves without doubt that in two cases the defendant SCHMITZ had indeed put at the disposal of the competent Geuleiter the bonus due to him from two firms of which he was a member of the Aufsichtsrat, under the express condition, however, that these sums, one of them - according to the statement by the witness ESTER - being RM 10,000.-, the other RM 7,000.- (They were, however, RM 10,000.- and RM 2,870.-

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according to the IG Document of the Prosecution recently made available to the Defense) should be used for social purposes. The two donations therefore belonged to the same category of social welfare which was also supported by the defendant SCHMITZ elsewhere. The only difference was that the money was distributed by a party authority. With regard to the purpose, however, for which they were meant, the sums were dedicated to the same aim as his other contributions. They had nothing to do with the giving of political assistance.

The positive attitude of the defendant SCHMITZ towards the Church, and also his warmhearted generosity is shown by the two affidavits of the vicars of his place of residence.

(Affidavit by vicar OESTREICH of 30 March 1948, Schmitz Evidence 100, Schmitz Doc. 100, Schmitz Doc. Book V, p. 100, and affidavit by vicar ROEHRICHT of 1 April 1948, Schmitz Evidence 103, Schmitz Doc. 110, Suppl. to Doc. Book Schmitz V, p. 6).

(Regarding the general character sketch of the defendant Schmitz, reference is also made to the affidavits by ABS, of 14 March 1948, Schmitz Evidence 72, Schmitz Doc. 72, Schmitz Doc. Book V, p. 1, by Dr. SINGER, of 21 March 1948, Schmitz Evidence 73, Schmitz Doc. 73, Schmitz Doc. Book V, p. 13, by Wilhelm v. FLUEGGE, of 16 March 1948, Schmitz Evidence 74, Schmitz Doc. 74, Schmitz Doc. Book V, p. 20, and by Prof. Hummel of 26 March 1948, Schmitz Evidence 75, Schmitz Doc. 75, Schmitz Doc. Book V, p. 24).

In this connection, the Defense of the defendant Schmitz would like to stress one point. The person now before the court is no longer the person who,

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during ten extremely difficult years, was as primus inter pares co-responsible for the management of the IG, and who was rightly esteemed and valued all over the world for his eminent financial capabilities and his great personal qualities. The defendant SCHMITZ of 1948 is a broken man, sick and old. The serious mental worries with which he had to cope during the last years of the war, and a psychological study of which is made available in Dr. SINGER's affidavit of 21 March 1948 (Schmitz Evidence 73, Schmitz Doc. 73, Schmitz Doc. Book V, p. 13); furthermore the effects of the German defeat and over three years confinement in penitentiaries, prisons and camps, have - together with an organic disease - completely changed this man's personality and have made the task of the defense extremely difficult. The Defense asks that this fact be taken into consideration, above all insofar as - in view of what was stated above - it has not been possible to give the Tribunal a fuller impression of the defendant's character by means of a direct examination.

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Count I of the indictment: Planning, preparation, commencement and waging of aggressive wars and invasions of other countries.

1. Alliance between the IG. and Hitler.

The defense for the defendant SCHMITZ, representing the entire defense, will also in the closing brief and in the final plea - as it has done in the argumentation - deal with the accusation of the Prosecution that the IG had formed an alliance with Hitler and with National Socialism as early as 1932 so as to help them attain power, consolidated that power and subsequently proceeded to conquer the continent and oppress its people, even aiming at a universal empire. This imputation of the Prosecution is of profound, basic importance, because only its justification offers the possibility of understanding the individual counts of the indictment from the psychological point of view. In the opinion of the defense, the Prosecution did not offer the slightest proof for this basic accusation. The two men who established the trend of the business policy and who were responsible for the general attitude of the IG prior to 1933 and during the first years after the seizure of power, were Geheimrat BOSCH, the chairman of the Vorstand of the IG and Geheimrat DUISBERG, the chairman of the Aufsichtsrat and the Verwaltungsrat. Their political steadfastness which is so well known and recognized in Germany and beyond that, in the whole world, actually renders
superfluous
any statement/that

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they - in view of their marked liberal and democratic political attitude and their entire character - could not have been friends but only convinced opponents of National Socialism. Despite this, the defense has duly submitted extensive evidence concerning that question.

With regard to the character and political attitude of BOSCH, special reference is made to the affidavit of Dr. KALLE, dated 4 October 1947 (SCHMITZ Exh. 5, SCHMITZ Doc. 5, SCHMITZ Doc. Book I, page 8), Dr. H. BUECHER dated 17 December 1947 (SCHMITZ Exh. 6, SCHMITZ Doc. 6, SCHMITZ Doc. Book I, page 21), Dr. LITTSCH dated 6 November 1947 (SCHMITZ Exh. 7, SCHMITZ Doc. 7, SCHMITZ Doc. Book I, page 37), Dr. HOLDERMANN dated 7 December 1947 (SCHMITZ Exh. 8, SCHMITZ Doc. 8, SCHMITZ Doc. Book I, page 47), Professor Dr. HOOPS dated 26 October 1947 (SCHMITZ Exh. 9, SCHMITZ Doc. 9, SCHMITZ Doc. Book I, page 61), Geheimrat ZENNECK dated 29 December 1947 (SCHMITZ Exh. 10, SCHMITZ Doc. 10, SCHMITZ Doc. Book I, page 63), as well as the letter from the Vorstand of the DEUTSCHES Museum to the Bavarian Ministerpräsident SIEBERT, dated 8 May 1939 (SCHMITZ Exh. 11, SCHMITZ Doc. 11, SCHMITZ Doc. Book I, page 65).

Particularly the affidavit of Dr. BUECHER - which due to the close personal relationship between Dr. BUECHER and BOSCH must be accorded special significance as evidence - gives a convincing and impressive picture of BOSCH as a man of equal importance as a scientist, industrialist and human being, who suffered greatly under National Socialism and who finally despaired mentally and morally on account of Hitler's policy. Special reference is made to page 6 of Dr. BUECHER's affidavit (SCHMITZ Doc. Book I, page 26), where he describes BOSCH's efforts to support BRUENING's government

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together with other German industrialists so as to stop the progress and seizure of power by National Socialism. Further reference is made to the statements of the witnesses LAMMERS on 20 January 1948 (especially English transcript page 5637/38 and 5656, German 5677 and 5695), v. RAULER on 20 January 1948 (English transcript page 5686, German 5725), KASTL on 21 January 1948 (English transcript page 5413, German 5753) and to the testimony of the witness FRANK-FAHLE during his cross-examination on 14 October 1947 (especially English transcript page 2041-2043 and 2049, German 2032-2034 and 2040/41).

The Prosecution has submitted a number of documents which are to prove Geheimrat BOSCH's collaboration in organs of the economy which had been established by the Third Reich, or his participation at functions when questions of German re-armament were dealt with.

(BOSCH's appointment to the General Economic Council, Exh. 60, NI-628, Book 3, page 128 (English), page 152 (German), affidavit KEPPLER, Exh. 59, NI-6766, Book 3, page 127 (English), page 150 (German), affidavit KOERNER, Exh. 422, NI-5955, Book 20, page 14 (English), page 68 (German) and document NI-9784, Exh. 57, Book 3, page 115 (English), page 126 (German) which also deals with the same subject).

These documents cannot derogate from the picture of BOSCH's character as it reveals itself in the extensive evidence submitted by the defense. It was a matter of course that the leading executive of the largest German enterprise was appointed to representative bodies of the German economy and also that great importance was attached to his presence at functions of the leaders of German economy.

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BOSCH's reaction in connection with his participation in such functions is partly dealt with in the defense documents referred to above. It is furthermore revealed in the statements of several defendants, particularly KRAUCH's on 12 January 1948, (English transcript page 5068, German 5108) who, among other subjects, also described BOSCH's efforts to inform GOERING in person of his anxiety concerning the general political development (also compare affidavit of BRAUCHITSCH, dated 23 December 1947, KRAUCH Exh. 169, KRAUCH Doc. 129, KRAUCH Doc. Book IX, page 8).

Relevant evidence concerning the political attitude and the character of Geheimrat DUISBERG is also contained in Document Book SCHMITZ I, in Exh. 5 (SCHMITZ Doc. 5, page 6 - questions 1-12), 12 (SCHMITZ Doc. 12, page 67), 13 (SCHMITZ Doc. 13, page 70), 14 (SCHMITZ Doc. 14, page 74), 15 (SCHMITZ Doc. 15, page 90) and 16 (SCHMITZ Doc. 16, page 101).

The correspondence between Geheimrat KIRDORF - one of the few supporters of National Socialism from the circle of big industrialists before 1933 - and Duisberg (par. a-c in SCHMITZ Exh. 14) is particularly impressive in this connection, also the article published by DUISBERG in the German newspapers in 1932 on the occasion of the election of a Reich President in Germany (SCHMITZ Exh. 15). The article shows a definite rejection of all radicalism, left wing or right wing, and clearly reveals a partiality for BRUENING's government. The particular value of the two latter documents as evidence lies in the fact

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that they represent contemporary evigence.

The two leading executives within the IG were, however, by no means the only opponents of National Socialism. Of the nine members of the Verwaltungsrat in 1933, no less than three were Jews, namely Carl and Arthur v. WEINBERG and Ernst v. SILSON (Exh. 382, NI-7957, Book 15, page 1 (English), page 1 (German)).

According to the code of procedure of the Verwaltungsrat (Enclosure II, par. 4) Dr. KALLE had been specifically assigned the sphere of tasks of a political representative of the IG, which position he held until the seizure of power. (Exh. 335, NI-5178, Book 12, page 168 (English, page 146 (German)).

(In this connection also compare affidavit Dr. KALLE, dated 8 September 1947, SCHMITZ Exh. 4, SCHMITZ Doc. 4, SCHMITZ Doc. Book I, page 1 - 3).

Dr. KALLE was a leading personality in the Deutsche Volkspartei (German Peoples' Party) and STRESEMANN's friend and ardent follower. The circle - so-called KALLE circle - which formulated the policy of the IG in connection with general political and economic-political questions and which practically shaped the entire political outlook of the IG, was composed of men whose political attitude was equally unequivocal. In addition to KALLE and BOSCH there was Clemens LAMERS - who also took the witness stand - one of the recognized leaders of the Catholic Zentrumspartei (Center Party),

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Prof. HUMMEL, the former Staatspräsident of Baden who was a member of the Democratic Party and who emigrated in spring 1939 before war broke out on account of his non-aryan wife, as well as Professor HOLDENHAUER (compare affidavit Dr. KALLE, dated 4 October 1947, SCHLITZ Exh. 5, SCHLITZ Doc. 5, SCHLITZ Doc. Book I, page 8).

In this connection it must be emphasized that the IG on principle refrained from exercising any influence in connection with current political questions and - without being under obligation toward any individual party - merely worked for a mediatory, liberal policy which upheld the government and which was alien to any kind of radicalism; it endeavored to achieve understanding and an adjustment of opinions. Compare in this connection the affidavit Dr. KALLE dated 8 September 1947 (SCHLITZ Exh. 4, SCHLITZ Doc. 4, SCHLITZ Doc. Book I, page 1) and Dr. BUECHER, dated 17 December 1947 (SCHLITZ Exh. 6, SCHLITZ Doc. 6, SCHLITZ Doc. Book I, page 21) where, on page 26, he describes the attitude of the IG as follows:

"If a policy of the IG Farbenindustrie A.G. is to be discussed at all, it can only be termed purely economic. It was based on well organized scientific research, high technical ability and daring enterprise. Therefore the realization of its plans lay in the future and it was most interested in a stable peaceful development, for every political complication must affect it disadvantageously in some way.

It is therefore inconceivable to me that the IG. Farbenindustrie A.G. should have condoned and consciously promoted Hitler's quest for power and conquest."

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In this connection the fact must again be emphasized that the defendants of this Trial, during the important period before and after the seizure of power, had no decisive influence on the business-policy and, above all, the political direction of I.G. (see page 18 of the Closing Brief).

The only conclusive argument advanced by the Prosecution for I.G.'s collaboration with Hitler and, with it, a starting-point for an alliance, is the visit paid to Hitler by the defendants BUESTERISCH and GATTINEAU in November 1932. It suffices to mention here that this visit took place on BOSCH's suggestion and with his consent, to prove unequivocally that this visit could not possibly have served the purpose ^{of} introducing a policy of the I.G. in opposition to the political trend of its leading personalities and at variance with its well-known traditions. I hereby refer to the details in the evidence submitted by the defendants BUESTERISCH and GATTINEAU, which proved that this meeting had purely economic business reasons and that political questions were of absolute ^{by} no importance in this connection.

The Prosecution has further established that in November 1932, certain German economic circles aimed at Hitler's nomination, by the Reich President at the time, von HINDEMBURG, as Chancellor of the Reich.

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(Evidence 32, PS-3901, Book 3, English page 48, German page 58). Though the Prosecution has failed to prove a participation in this endeavor by I.G. or any one of their leading personalities (the supposed co-signatory of this statement, Rob. BOSCH, not being identical with the then Chairman of the Vorstand of I.G., Carl BOSCH), I refer in this connection to Dr. KALLE's attitude in his affidavit of 4 October 1947, question 25 (SCHMITZ Evidence 5, SCHMITZ Document 5, SCHMITZ Document Book I, page 8) and to the declaration of Dr. FLICK on 12 March 1948 (English transcript page 9026, German transcript page 9120).

Special importance is apparently attributed by the Prosecution to the gift of RM 400 000.- reference to it being made in the Prosecution's Preliminary Memorandum Brief, Part I, page 14, under number a):

"At a time when the Nazi Party was in a critical state and notwithstanding the direct knowledge which the defendants had of the Hitler program, they nevertheless gave their support by contributing RM 400,000.- to enable Hitler to acquire power at the coming election in March 1933."

This statement by the Prosecution is erroneous on all counts. To begin with this contribution was not made at a time when the NSDAP was passing through a critical stage, but at the end of February 1933, when Hitler had been nominated Chancellor of the Reich and when he had already seized power. (Evidence 56, NI-391, Book 3,

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English page 112, German page 122). At this time there could no longer be any question of the Party being in a difficult financial position. In the excerpt introduced by the Prosecution from Dr. GOEBBELS Journal "From the Kaiserhof to the Reich Chancellery" (Evidence 33, NI-6522, Book 3, English page 52, German page 72 - SCHMITZ Evidence 29, SCHMITZ Document 29, SCHMITZ Document Book II, page 54 we read: (English page 53, German page 74)

"3. February 1933. I am discussing the election campaign which is starting now in detail with the Fuehrer. Now it is easy to conduct the fight because we can lay claim to all the means of the State for our purposes. The radio and press are at our disposal. We will produce a master-piece in the way of agitation. This time money is of course not lacking either."

(Underlined by us)

Moreover, the amount of RM 400,000 was not put at Hitler's disposal but destined to go proportionally to all three parties of the government-coalition of the time, that is to say to the Deutschnationale Volkspartei and the Deutsche Volkspartei as well as to the National Socialists.

(See in this connection declaration by the witness FLICK, on 12 March 1948, English transcript page 9036, German transcripts pages 9132/33 and excerpt from examination SCHACHT in the Flick-Trial, SCHMITZ evidence 30, SCHMITZ Document 30, SCHMITZ Document Book II, page 57, proving simultaneously that of the total of RM 3 million raised, only RM 2,4 million were spent on the election.)

In introducing evidence in connection with this contribution, the Prosecution affirms that this payment by IIG. is the greatest individual gift made to this collection (English transcript pages 348/349, German transcript page 332). This statement is also incorrect. As is proved by Prosecution document NI-391 (Evidence 56, Book 3, English page 112, German page 122), the payment made in three instalments

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by the Association of mining-interests (Verein fuer die Bergbau-interessen), Essen amounts to a total of RM 600.000.-

There cannot possibly be any question of the defendants having made this amount available to Hitler since, at the time, they were by no means in a position to make a decision in such matters nor to participate in it. As shown by Dr. KALLE's affidavit, dated 8 September 1947 (Schmitz evidence 25, Schmitz Document 25, Schmitz Document Book II, page 40), the competent authority for larger contributions as well as for such of basic importance, was not the Vorstand but the Administrative Council of I.G., a fact which is of general importance in examining I.G. contributions.

(See in this connection statement KRAUCH on 13 January 1948, English transcript page 5157, German transcript page 5181).

As a matter of fact, the Prosecution has failed to submit evidence of the participation of any of the defendants in the resolution to grant this contribution, whilst the defendants in the witness stand, among others HOERLEIN on 30 January 1948 (English transcript page 6147, German transcript page 6204) GAJEWSKI on 2 March 1948 (English transcript page 8195, German transcript page 8268) and MANN on 1 April 1948 (English transcript page 10335, German transcript page 10468) have emphatically confirmed that this contribution had not been discussed in either the Central Committee or in the Vorstand.

(From an affidavit received by the Defense after the termination of evidence and made by Oskar KIENBERGER, proprietor of Hotel Waldhaus, Sils Maria, Engadine Switzerland, dated 23 April 1948, it follows moreover that the defendant SCHMITZ was in Switzerland from 4 February until 3 March 1933 and staying at Hotel Waldhaus, so that for this reason, if no other, he could not have had a share in the granting of this contribution.)

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As to the general decision to make this contribution, I refer to the statement by LAMMERS of 20 January 1948 (English transcript page 5653, German transcript page 5691).

Over and above this, however, it must be stated in connection with this decision, that I.G., unable to avoid supporting the government-parties of the time, thus also supported the parties of the opposition.

(See affidavit Ernst PFEIFER of 8 September 1947, Number IV, Schmitz evidence 24, Schmitz Document 24, Schmitz Document Book II, page 36).

Besides, if I.G. had intended to give financial support to the National Socialist Regime's rise to power, it would certainly not have limited itself to a payment of RM 400,000.-. I.G. was considerably more generous in its fight against the National Socialist order. In the election contest Hindenburg-Hitler in 1932 for the presidency of the Reich, that is to say at the time when, according to the Prosecution, the alliance was concluded between I.G. and Hitler, I.G. made RM 1,000,000.- available for Hindenburg's election-fund and the then Chairmen of the Aufsichtsrat, Geheimrat DUISBERG personally raised a considerable proportion of the total amount of 7½ million RM collected for the purpose.

(See in this connection affidavits PFEIFER, dated 8 September 1947, Schmitz evidence 24, Schmitz Document 24, Schmitz Document Book II, page 36, Dr. GEREKE, dated 21 October 1947, Schmitz Evidence 26, Schmitz Document 26, Schmitz Document Book II, page 42, Dr. KALLE dated 8 September 1947, Schmitz Evidence 25, Schmitz Document 25, Schmitz Document Book II, page 40).

Witness HUMMEL in his affidavit of 5 January 1948 (Schmitz evidence 106, Schmitz Document 103

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Schmitz Document Book VI, page 38), states that after 1933 I.G. had spent millions in supporting the Frankfurter Zeitung with the aim of having an independent organ in hand in the event of Hitler's failure.

Witness PFELFER, supplying a general summary on the support of the center-parties in his affidavit of 8 September 1947, (Schmitz Evidence 24, Schmitz Document 24, Schmitz Document Book II, page 36), reports in his affidavit of 18 December 1947 (Schmitz Evidence 27, Schmitz Document 27, Schmitz Document Book II, page 45) on the financial support given to the Frankfurter Nachrichten, a middle-class paper, immediately before and after the seizure of power, expenditure for this purpose exceeding RM 500,000.--

Finally reference must be made to the contribution of RM 5,026,250.-- by I.G. in 1942 to the Promoting Association of the German Industry (Foerderergemeinschaft der Deutschen Industrie), in order to assist scientific research at German universities, which was menaced by the prevailing developments.

(See in this connection Prosecution evidence 80, NI-9200, Book 4, English page 48, German page 65 - Supplement No. 26, also, as to reasons inducing I.G. to this payment, statement by defendant HOERLEIN, dated 2 February 1948, English transcript page 6214, German transcript page 6270).

If, in following the Prosecution's argument, we agree that I.G. aimed at assisting National Socialism to seize power, then a payment of RM 400,000.-- would hardly have represented a supporting fund worthy of I.G.'s economic strength and otherwise reputed generosity

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in striving for so prominent a political goal which according to the Prosecution's contention, was the starting-point for long-term universal, if criminal, planning.

The Prosecution, in proving the alliance of I.G. with Hitler, further refers to its financial gifts to the NSDAP and different party-organizations from 1933 to 1944, estimating these payments to have amounted to a total of over 40 million RM (Evidence 80, NI 9200, Book 4, English page 56, German page 77); it has to admit, however, that the contributions for the Winter Aid and the Adolf Hitler Fund were based on certain compulsory contributions which were fixed by the German economic offices (see Preliminary Memorandum Brief, part I, page 14).

The Defense, in Basic Information, volume II, Defense Evidence 176 and 177 (Document 4 and 5 page 6 and 9), has given a detailed statement of all political contributions and has worked out what proportion this represents of the total profits made by I.G. during the years in question. If, in spite of their compulsory nature, the Adolf Hitler Fund and the Winter Aid contributions are included, then these donations during the years 1933 to 1944 amount to an average of 0.18 % of the total annual profits. If, however, in view of their compulsory nature, they are duly withdrawn from consideration, the expenditure for political contributions is reduced from a

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total amount of RM 36.2 millions to RM 7.6 millions, or to an average for the years 1933 to 1944 of 0.03 % of the total profits.

No impartial critic can arrive at the conclusion that these payments represent financial contributions of any importance, though designated as such by the Preliminary Memorandum Brief of the Prosecution. This is rendered even more evident if this sum is spread over 12 years and only apportioned to the 20 most important I.G. works, as has been done by the defendant ROERLICH in his examination on 2 February 1948 (English transcript page 6215, German transcript page 6272), though this was based on divergent figures. This immediately makes it clear that these payments represent a modest fraction only of the amounts which the works would have been obliged to expend in the event of their operating as independent individual enterprises, and which, as a matter of fact, was actually expended for this purpose by smaller and medium-sized concerns.

Dr. HOYER's letter to SCHMITZ, dated 23 October 1936 (Schmitz evidence 78, Schmitz Document 78, Schmitz Document Book V, page 35) proves that competent Party offices were by no means enraptured by I.G.'s liberality but, on the contrary, were inclined to criticize their reserve and lack of generosity.

Moreover, a complete ignorance of living conditions in Germany during the Third Reich is demonstrated if the Prosecution infers

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from such payments, a conscious, systematic support of National Socialist policy by I.G. and even considers these payments as a proof of the existence of an alliance between I.G. and Hitler. Apart from the fact that these contributions automatically applied to all parts of the German population and had to be made by the workmen as well as the artisan and tradesman, the industrial lower and middle classes and the capitalists, it must be taken into consideration that even where they were not generally determined as to their kind and extent, as in the case of the winter- and the Adolf Hitler Fund donations, they were not given out of true generosity, because of the pressure resulting from the general living conditions in Germany during the Third Reich and affecting individuals as well as enterprises - a pressure which it was possible to mitigate in individual cases but which could not be avoided for any length of time. The defendant HOERLEIN in his examination on 2 February 1948 (English transcript page 6207 and 6205, German transcript pages 6264 and 6271) has correctly pointed out that there was no question of true generosity in connection with these donations and has mentioned the slogan "voluntary coercion", as this procedure was sarcastically named in party-circles. He also justly emphasized the fact that the defendant SCHMITZ, as financial representative of I.G., was in particular exposed to such attempts at financial extortion.

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However, it is of vital importance that no political connections can be deduced from the fact of these donations, though they were given without pressure in a few individual cases; neither can they be considered as demonstrations of sympathy for the existing regime, as long as they did not exceed the usual generally observed limit.

(See testimony by LAMMERS on 20 January 1948, English transcript page 5653/54, German transcript page 5692, who points out that a refusal to donate to any of these funds would have had the gravest consequences for the factories; he states that frequently these payments were made even by persons whose ideology did not coincide with that of the Party, to avoid difficulties for themselves).

Witness HASTL, testifying on 21 January 1948 (English transcript page 5725, German transcript page 5764), expressed the same idea as follows:

"When making contributions to the Party, the National Socialist ideology or party ideology played a subordinate part. There were various motives for making such contributions. Payments, for instance, to secure for oneself peace and quiet. If I were to so state it in this way, they were insurance premiums. The Party was very corrupt in this respect. They took money whenever they could, foreigners as well who had enterprises in Germany were very much in favor of contributing to the Nazi party to protect their enterprises. Even Jews contributed in order to get security, peace and quiet for themselves, in order to facilitate their emigration, and so on. From my practice as a lawyer in Berlin, I know this particularly well, since more than 75 per cent of my clients, were persons who were persecuted by the measures and laws of the Nazis."

(Concerning this question see also testimony FLICK on 12 March 1948, English transcript page 9044, German transcript page 9140).

Finally, in viewing the matter of these donations we must not to a very considerable extent ignore the fact that they were given for perfectly non-political purposes, and were used to relieve personal distress, not

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that
withstanding the fact/the collection was carried out by a party
agency of an an organization closely connected with the party.

The fact that industry, when asked to make donations, was by no means always ready to pay unhesitatingly, but made very exact inquiries into the purpose, and subsequently received a detailed and plausible reply, is shown in the excerpt of a memorandum by Dr. von HOFACKER dated 8 August 1948(1938)(SCHMITZ Exhibit 83, SCHMITZ Doc. 83, SCHMITZ Doc. Book V, page 47). This memorandum by Dr. HOFACKER refers to the relief scheme for the Hungry of Austria, initiated by SCHACHT, to which IG contributed RM 250.000.-. The figure is part of the total payments to the NSV amounting to RM 936.765,11; appendix to Prosecution Document NI-9200 (Exhibit 80, Book 4, English page 38, German page 51).

The wartime donations to widows and orphans of SS members killed in action, of which SCHMITZ was the sponsor, will be dealt with separately in connection with count IV according to the brief of the Prosecution.

The presents which the IG made to GOERING on the occasion of his birthday over a number of years are in line with the payments made to the Party or organizations closely connected with the Party.

(Exh. 465, NI-536, Book 22, English page 62, German page 77,
Exh. 466, NI-540, Book 22, English page 66, German page 83,
Exh. 467, NI-532, Book 22, English page 68, German page 86,
Exh. 468, NI-543, Book 22, English page 70, German page 90,
Exh. 469, NI-1315, Book 22, English page 73, German page 92)

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Again, it is not a question of a manifestation of a particular sympathy, but of an "insurance premium", in the sense of the above-mentioned testimony of the witness KISTL on 21 January 1948. Moreover, the defendant KRAUCH, during his examination on 13 January 1948, stated that, virtually, IG was not even free to choose its birthday present, since GOERING sent word through his office to KRAUCH's secretariat, some time prior to his birthday, telling him what kind of birthday present was expected. (English transcript page 5159, German transcript page 5184).

(See also testimony ter Meer on 11 February 1948, English transcript page 6773, German transcript page 6699, showing that these presents of IG "were rather moderate.")

Let me finally point out that it was the general opinion in Germany, confirmed by GOERING's own statements, that the art treasures which he amassed were after all not valuables which he meant to appropriate for himself, but that he intended to place them at the disposal of a German national art gallery.

The agreement between IG and Hitler, as alleged by the Prosecution, should, in spite of the difference of opinion in individual issues, at least have contained an indispensable, inner, basic element, a sense of fellowship, an inner recognition of the IG as an ally by the powers of the Third Reich. Even this vital prerequisite was completely absent. On the contrary! From 1933 until the

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collapse, the leaders of the Third Reich were inwardly antagonistic toward the IG, and frequently enough this manifested itself even outwardly. It is sufficiently well known that National Socialism, as a matter of principle, rejected large-scale private enterprise, and had set itself the aim of breaking it ultimately. If this applies generally, it applies in particular to the IG, whose international interests and associations made this enterprise politically unreliable and suspect in the eyes of the National Socialist leaders. In this connection see in particular the testimony given by Abs in his affidavit of 14 March 1948 (SCHMITZ Exh. 72, SCHMITZ Doc. 72, SCHMITZ Doc. Book V, page 1), who makes the following statement pursuant to this question, on page 9:

"It was just this international position that made the men in charge of the Third Reich very suspicious of the IG Farben, as well as of other German enterprises, even more than did their dislike which was due to its powerful position and economic weight, especially since the IG constantly attempted to keep itself clear of Party influence."

(I refer further to the testimony of the witness Dr. KRUEGER, in the cross-examination on 28 October 1947, English transcript page 2947, German transcript page 2966, LILCH in his examination on 15 January 1948, English transcript page 5312, German transcript page 5337, FLICK on 12 March 1948, English transcript page 9044, German page 9139 and OHLENDORF on 2 December 1947, English transcript page 4506, German transcript page 4526).

The true inward attitude of leading Party circles to IG is shown very strikingly in the affidavits of STEINLE dated 5 February 1948.

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(SCHMITZ Exh. 107, SCHMITZ Doc. 104, SCHMITZ Doc. Book VI, page 41), Dr. NAUMANN dated 5 March 1948 (SCHMITZ Exh. 108, SCHMITZ Doc. 105, SCHMITZ Doc. Book VI, page 44), VIOLET dated 21 January 1948 (SCHMITZ Exh. 109, SCHMITZ Doc. 106) SCHMITZ Doc. Book VI, page 48) as well as Professor HOFFMANN dated 11 March 1948, (SCHMITZ Exh. 110, SCHMITZ Doc. 107, SCHMITZ Doc. Book VI, page 50).

The question of the actual causes of the National Socialist seizure of power is an extremely involved and difficult subject, which to this day defies all attempts to settle various points once and for all. To discuss this question would transgress the limits of these proceedings, as the prime object for the defense in this trial is to establish that the defendants are not the person who entered into a pact with Hitler and helped him to power. We consequently confine ourselves in this closing brief to a few brief remarks which shall merely sketch the actual issue.

It is certain, for one thing, that National Socialism managed to obtain 14 million votes through a misuse of the formal rules of the game of democracy, availing itself of the ballot papers in free elections prior to 1933 (testimony LILBERS of 20 January 1948, English transcript page 5638, German transcript page 5677/78), and that the number of these followers of Hitler was swelled by the broad masses of the population after the seizure of power. The witness BUECHER says the following in this connection.

"The masses of unemployed and the organized workers who had deserted their leaders were marching behind Hitler during the second speech. In 1933/34 nobody will admit this any more. .. system like Hitler's could only succeed with masses inspired with fanaticism and

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not with the intellectual classes of the nation. One cannot imagine that Hitler - relying on a few hundred or a few thousand industrialists - could have achieved even the least success."

(SCHLITZ Exh. 6, SCHLITZ Doc. 6, SCHLITZ Doc. Book I, page 35).

In his cross-examination on 29 October 1947 (English transcript page 2970/71, German transcript page 2989/90) the witness KRUEGER testified to the same effect and the witness LIEBERS, in his testimony of 20 January 1948 (English transcript page 5641, German transcript page 5680/81) confirms the truth of this observation, while, on the other hand, he gives a detailed description of the disapproving attitude of the vast majority of industrialists, and especially of the leading IG personalities toward National Socialism in the critical time of the turn of the year 1932/33 and even afterwards. If only to prove that it could not have been the donation of a German industrial enterprise which founded and consolidated the power of National Socialism, but that the problem is rooted much more deeply, let me also refer to Exhibit SCHLITZ 104 (SCHLITZ Doc. 101, SCHLITZ Doc. VI, page 1), which contains the opinion of a definitely reliable witness, the former Reich Chancellor BRUENING, on problems of German domestic development in the critical years of 1931-1934. Finally, a public declaration by the same author proves (SCHLITZ Exh. 105, SCHLITZ Doc. 102, SCHLITZ Doc. Book VI, page 34), that the universally expected collapse of National Socialism for economic and foreign exchange reasons did not materialize because the other countries, by taking important economic measures, helped National Socialism, either intentionally or unintentionally, to consolidate its once established power, which was gravely threatened economically,

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and this averted the danger of the regime's collapse for economic reasons.

Apart from the economic measures dealt with in the report by the former Reich Chancellor BRUENING, the recognitions, and over and above that, the manifest honors which the other countries conferred upon the Third Reich and its leaders, contributed very substantially - especially in the first years after the seizure of power - towards consolidating the position of the regime and frequently enough towards confusing sceptical persons in Germany as to the justification for their doubts.

In this connection I refer especially to the excerpt from the examination of the chairman of the Aufsichtsrat of Norddeutscher Lloyd, LINDEMANN, in the FLICK trial on 12 June 1947 (SCHMITZ Exh. 34, SCHMITZ Doc. 34, SCHMITZ Doc. Book II, page 72), and the excerpt from the IMT transcript, session of 2 May 1946 (SCHMITZ Exh. 35, SCHMITZ Doc. 35, SCHMITZ Doc. Book II, page 76), in which the defendant SCHLICHT testifies as witness on the honoring state visits of representatives of foreign countries to Hitler, and on the political and moral support which was thus given to the regime, while at the same time the position of the political opposition in Germany was made much more difficult.

(See also testimony KISTEL on 21 January 1946, English transcript page 5724, German transcript page 57 63/64).

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2. Could the IG have been interested in an aggressive war?

If the Prosecution has thus been unable to prove that the IG and especially the defendants, entered into a union with the National Socialist Regime and that the financial contributions made to this regime had the character of a large-scale support of the aims of this regime, the question remains whether, despite the lack of this fundamental prerequisite, the IG yhad any interest, as is alleged by the Prosecution, in making common cause with the National Socialist policy for the accomplishment of power-political aims, a policy which, as we now know, led to aggressive wars in Europe and thus to the ruin of the German people. In other words: Despite the lack of fundamental unity, there was no agreement between the National Socialist Regime and the I.G. in the particular question of establishing, by force, German supremacy in Europe or even in the world. Thus the question arises: Was the I.G., or could the I.G. have been interested in a war? This question is most definitely to be answered in the negative. As is apparent from documents 6-10, as well as from 17 and 18 of the Basic Information, Volume II (Defense Exhibits 178-182 as well as 188 and 189) the IG not only in comparison to the enterprises in the German large-scale industry but also in proportion to large concerns

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all over the world. I.G. was especially active in exports, owned a large number of valuable investments abroad and had a first-class sales organization spread all over the world and thus in the event of war, was highly vulnerable in every respect. Besides this, its profitability was, in the long run, dependent upon the maintenance of a normal international exchange of commodities.

The witness LAMMERS (statement of 20 January 1948, English transcript pages 5632/33, German pages 5670/71), v. RAUMER (of 20 January 1948, English transcript page 5693, German 5732) and KASTL (of 21 January 1948, English transcript page 5716, German page 5755) have made statements on the question concerning the interest of German industry in an aggressive war, and they all agree in denying the existence of such an interest on the part of the German industry as a whole and the I.G. in particular. The witness FRANK-FAHLE expresses this idea in the following wording, in his examination on 22 March 1948 (English transcript pages 9806/07, German page 9939):

"I believe I do not need to repeat that we in the I.G. - I believe especially those people in the dock and also every other member down to the smallest salesman - were opposed to any war in any form whatever; for quite apart from its result, it meant a serious blow to the world market and to the international business of I.G. We had all had enough of the destruction which resulted for world economy after the First World War. Therefore it is understandable that in our own small way we tried to influence the course of events in order to prevent a war."

In regard to the same subject of evidence please refer also to the statement of the witness Dr. KRUEGER in his cross-examination on 28 October 1947

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(English transcript page 2947, German page 2966) as well as the statements of the defendants in the witness stand,, especially that of KRAUCH on 12 January 1948 (English transcript page 5045, German page 5066), TER MEER on 16 February 1948 (English transcript page 7025, German pages 7179/80), GAJEWSKI on 2 March 1948 (English transcript page 8236, German page 8308) and MAHN on 1 April 1948 (English transcript page 10328 and 10344, German pages 10461 and 10476).

As is expressed time and again in the statements of the defendants as well as in those of the witnesses, the catastrophic consequences of the First World War - which for the German industry and especially for the parent companies of the IG resulted in the loss of foreign investments and patent-rights, the destruction of their foreign sales organization and the complete or partial loss of their export markets for years to come, and thus threatened the very existence of the enterprises - was still a warning example to all concerned. Common sense therefore, must have told each man responsible for the fate of the I.G. that in this instance too, a new war must only jeopardize anew the reconstruction achieved by hard effort and industrious work and that even a successful war for Germany in Europe would not compensate for the losses and permanent disadvantages resulting for the world markets of the I.G. Furthermore, a war would in any case considerably weaken the inner economic power of an enterprise in Germany, i.e. not only through the possible destruction of the plants but also because of the impossibility of keeping the capacity of each plant up to its old standard by means of current repairs and replacements during the years of war.

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3. The charges made against SCHMITZ personally in connection with Count I of the Indictment.

If the Defense for the defendant SCHMITZ now deals with the charges made against its client personally, it wishes to make it quite clear beforehand that in voicing its opinion, it will confine itself to such cases in which the Prosecution alleges special cooperation on the part of the defendant SCHMITZ or in which the Defense itself deems it necessary to define its attitude towards the actual evidence submitted, in order to clarify the special position which SCHMITZ occupied as financier of the IG. No discussion is to be entered into within the framework of this Closing Brief with regard to any other facts submitted by the Prosecution, such as those concerning the extent of IG Farbenindustrie's activity within the rearmament program, the measures taken in regard to Vermittlungsstelle 3, mobilization plans, map exercises, air-raid precautions etc; and the discussion of these problems will be left to the individual defendants mainly responsible for these measures or engaged in carrying them out, as was also done when submitting evidence for the Defense. On the whole, the Prosecution itself did not charge the defendant SCHMITZ with being connected with these affairs, since

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they took place almost exclusively in the technical sector and were therefore, from the point of view of the actual work, beyond his sphere of competence. The fact that SCHMITZ was not informed about these affairs and was not even allowed to be informed, is revealed by the statement of the defendant KUSHNE on 31 March 1948 (Engl. tr. p. 10225, Germ. p. 10360) in which he points out during his discussion of the so-called mob plans, that so far as these plans were concerned, the technical colleagues even preserved secrecy towards each other and they were not dealt with in the Vorstand or Technical Ausschuss. When the question was put to him as to whether SCHMITZ personally was informed about this, he replied: "SCHMITZ even far less".

As far as the Prosecution has proved in individual cases that SCHMITZ was informed by receiving copies or in any other way, reference is expressly made here to the evidence and the Closing Briefs of the defendants mainly competent in the matter.

- A. The statement by the defendant SCHMITZ of 17 September 1945,
contained in Prosecution Exh. 334, Prosecution Doc. NI-5187 •)

Before discussing individual questions, the Defense deems it necessary, to begin with, to discuss the statement by the defendant SCHMITZ of 17 September 1945, as submitted by the Prosecution and contained in the affidavit of ter MEER, dated 15 April 1947 (Exh. 334, NI-5187, Book 12, Engl. tr. p. 126, German p. 107).

•) see remark at the end of this Closing Brief.

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The Defense requests Your Honors to examine the question once more as to whether the introduction of this statement is permissible under court procedure. Reference is made to the numerous applications made in this connection, in which the attitude taken by the Defense is thoroughly discussed.

(The applications concerned are those dated 16 and 31 March, 23 April, as well as 5 and 12 May 1948.)

The viewpoints presented in these applications are briefly
once more
summarized/as follows:

1. No proof whatever was produced by the Prosecution that the wording of the statement contained in Prosecution Exh. 334 actually is the wording of the statement as signed by the defendant SCHMITZ i.e. the original. As explained by the Prosecution and as is also apparent from the revocation by the defendant SCHMITZ of 26 August 1946 which is also contained in Exh. 334, this statement represents a condensed summary of interrogations lasting several days. The statement was not drafted by the defendant SCHMITZ, but by the interrogator WEISSERODT. A comparison with the first draft, submitted with the application of 16 March 1948, with the wording as contained in the Prosecution Exh. 334, proves absolutely clearly

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to what extent WEISSERODT's draft differs from the wording contained in the Prosecution Exh. 334; and that evidently the object of the interrogator was to obtain from the chairman of the Vorstand a far-reaching and formal "confession of guilt", an endeavor to which the defendant SCHMITZ offered resistance as long as possible.

2. The declaration was not made on oath.

3. The defendant SCHMITZ made this statement under duress.

Consequently it was not made voluntarily and therefore its utilization in court is not admissible. Particular reference is made in this connection to the applications of 5 and 12 May 1948 as well as to the stipulation with the Prosecution in the session of 10 May, in which the Prosecution in effect admitted that a few days before the statement was made, the interrogator LINVILLE had pointed out to the defendant SCHMITZ the ordinance No. 1 of the American Military Government and article 33 which provides for exceptionally severe punishment in the event of a refusal to make a statement. If, in spite of this state of affairs, the Tribunal should persist in its opinion, according to which the introduction of the statement in court is admissible despite the viewpoints explained above, then

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the Defense is of the opinion that it has no value as evidence. It also gives the following reasons for this, in addition to the viewpoints presented when dealing with its admissibility:

a. The defendant SCHMITZ formally recalled his statement a long time before the beginning of this trial, by means of his statement of 26 August 1946, which contains full details as to the reasons for his revocation, and which is also contained in Pros. Exh.

334.

b. In the course of the interrogations which finally led to the signing of this statement, the defendant SCHMITZ was in a state of health which made it impossible for him to make a responsible statement. In its motion of 16 March 1948, the Defense stressed this fact specially and submitted proof of it. Since the Prosecution itself is not in a position to submit the Schmitz files kept by the American authorities, it is again requested that the Tribunal take steps to have these files produced. They will prove that immediately after signing the statement in question, SCHMITZ had a serious nervous breakdown, which made it necessary for the interrogations to be interrupted for several weeks and for him to receive treatment from American doctors.

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In this connection the Defense would like to emphasize the following:

The Prosecution itself is apparently of the opinion, that the defendant SCHMITZ' state of health makes it impossible to obtain reliable information from him. Therefore, apart from a statement of 17 September 1945, and although SCHMITZ was interrogated repeatedly over a period of many months, the Prosecution did not introduce a single statement by the defendant SCHMITZ into the proceedings. In this connection reference is made to the first application made by the defense counsel of the defendant SCHMITZ to have his state of health examined. This application, dated 15 August 1947, among other items reads as follows:

"According to that which we heard from Mr. Sprecher these facts which we have ascertained seem to tally at least in part with observations made by the members of the Prosecution when having my client interrogated during the last few months."

If, in the opinion of the Prosecution, too, the defendant's state of health is so bad, that the Prosecution themselves have reached the conclusion that the defendant SCHMITZ is unable to make a responsible statement, then in the interests of establishing the truth, it is impossible to make an exception in respect of one statement by the defendant, and it has been proved beyond any doubt, that this statement is actually incorrect and incomplete in many points.

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c. When SCHMITZ made his statement, at the request of the interrogator Mr. WEISSBRODT, he was given the impression - actually incorrect - by the co-defendant von SCHNITZLER, that the conclusions reached in his statement had already been clearly established through careful investigations by the referenten of the TEA-office, Dr. STRUSS and Dr. LOEHR, and being the chairman of the Vorstand, he was merely to affix his formal signature to these facts which had been established beyond any doubt.

(See in this connection letter v. SCHNITZLER, dated 20 June 1946, contained in Prosecution Exh. 334, as well as KNIERIEM Exhibit 25, KNIERIEM document 26, KNIERIEM Document Book IV, page 259).

d. This statement, in its most essential parts, deals with a subject which is completely beyond the competency of the defendant SCHMITZ; he particularly emphasized this fact and requested the opinion of the competent technical members of the Vorstand of the I.G. on these questions, especially that of TER MEER. Actually this has not been done or at least only in a completely insufficient manner.

(See revocation by SCHMITZ dated 26 August 1946, the defendant TER MEER's own statements on this question contained in Prosecution Exhibit 334, as well as the letter written by v. SCHNITZLER on 20 June 1946).

It is typical of the methods used by the interrogators at that time, that they did not interrogate the competent and therefore expert representatives of the I.G., because the attitude of the latter could not be expected to be one which

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would comply with the wishes of the interrogators. Thus they only interrogated incompetent members of the IIG. who had nothing or hardly anything to do with the questions under discussion, and who - at least in the case on hand - were intentionally misled. It is a fact and has been proved that SCHMITZ's statement in a number of points contains incorrect information, which is due to a lack of knowledge on the part of the defendant SCHMITZ of the matter under review and to the fact that no documents were made available to him during his interrogation.

(See in this connection the previously mentioned revocation dated 26 August 1946 for particulars; TER MEER's statements in his affidavit, as well as all the defense documents submitted with regard to the individual points, which cannot be presented here in full, due to the general character of the statement of the defendant SCHMITZ).

If this statement is incorrect in decisive points and this has been proved, then no probative value can be accorded to it with reference to other points which do not deal with individual definite subjects, but with a general opinion on the activity of the I.G.

B. The charges in detail.

As proof of the part taken by the defendant SCHMITZ in the German re-armament as well as in proof of his knowledge gained thereby of the German armament plans

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and beyond this of Hitler's plans for the waging of an aggressive war, the Prosecution introduced document NI-5380, Prosecution Exhibit 400 (book 19, page 1) from which it becomes evident, that SCHMITZ attended a meeting of the Advisory Council (Gutachter-ausschuss) for raw material problems. The Prosecution intentionally leaves the significance of this advisory council undefined and only connects it by means of vague hints with the war preparations made by the National Socialist government.

To begin with it must be pointed out, that this advisory council did not by any means deal either exclusively or even mainly with questions of the German re-armament, but that its principal task was to remove the difficulties in the procurement of raw material, which arose on account of the German foreign currency position, and thus to maintain the full output capacity of the German economy. Over and beyond this, it is shown by the affidavit BLESSING, dated 23 December 1947, (SCHMITZ Exhibit 50, SCHMITZ Document 50, SCHMITZ Document Book IV, page 20) that this premium was by no means a permanent institution, but more or less a circle which had been casually called together, and which was to deal with the difficulties in the procurement of raw material and foreign currency. The witness continues on page 21/22:

"I never heard that the committee as such submitted definite general proposals on the policy to be pursued with regard to raw materials and foreign exchange, as the name might seem to suggest."

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"In view of the fact that the Four Year Plan was already announced in the autumn of 1936, resulting in the creation of a central office to deal with problems relating to raw materials and foreign exchange, it is certain that discussions were not continued, at any rate in that form and between that set of persons."

The witness confirms furthermore, that discussions in this circle only took place twice or three times, so far as he remembers; and that the defendant SCHMITZ did not play any prominent part in the discussions,

"the more so, since to parade himself in public was alien to his nature."

The Prosecution witness GRITZBACH confirmed on 16 October 1947, when cross-examined by the Defense, that the activity of this Ausschuss had lost practical importance through the publication of the Four Year Plan, which already took place a few weeks after the date when the meeting, to which the Prosecution referred, took place. (English transcript page 2293-2295, German transcript page 2287/88).

Moreover the Prosecution pointed out that SCHMITZ was informed by KRAUCH on the "long-term aims" and tasks of the Four Year Plan.

(Interrogation of the defendant KRAUCH on 29 April 1947, Exh. 437, NI-6768, book 20, English page 63, German page 150).

The defendant KRAUCH modified his statement when heard as a witness on 16 January 1948 to the effect, that he only had discussions of a very general nature with SCHMITZ on the tasks of the Four Year Plan; and this too only in-so-far as the I.G. was involved in the

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implementation of these tasks, such as for instance in the Buna and Benzine sector; but that, on the other hand, he did not discuss either with SCHMITZ or with any of the other defendants, any questions whatever over and beyond the subjects mentioned and especially not questions in regard to the activity of the rest of the German industry; he did so because he wanted to keep strictly to his neutral viewpoint, which was incumbent upon his official position (English transcript page 5385, German transcript page 5413/14). The defendant KRAUCH repeatedly and expressly pointed out on various other occasions during his interrogation, that he constantly endeavored to maintain a strictly neutral position in his official activity and that he had carefully separated his official function and the I.G. (Testimony KRAUCH on 13 January 1948, English transcript page 5116/17, German transcript page 5139-40); regarding the aims pursued by the Four Year Plan, reference is made to the testimony of the defendant KRAUCH on 12 January 1948 (English transcript page 5079, German transcript page 5099).

For the rest, the wording of KRAUCH's interrogation on 20 September 1945, as contained in Prosecution document NI-6768, makes it clear, that in this mutual exchange of ideas between himself and SCHMITZ, he did not, on the whole, enter into discussions with regard to the aims of the Four Year Plan until after BOSCH had died, i.e. as from 1940:

"Q.: Did you have occasion to inform your close colleagues in the I.G. Farben as to the general nature, the over-all goal of your work in the Four Year Plan, what your actual target was?"

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A: That I talked over with Geheimrat SCHMITZ with reference to long range goals of the Four Year Plan. I had talked with Dr. BOSCH while he was alive much more concerning matters of the Four Year Plan."

(Book 20, English page 80, German page 180)

In its preliminary memorandum brief (part I, page 87) the Prosecution refers to a letter from the then State Secretary for Aviation MILCH to the defendant KRAUCH, dated 23 July 1935; this was probably done with the intention of illustrating the intimate relationship between the defendant KRAUCH and SCHMITZ and to show at the same time that the defendant SCHMITZ was informed with regard to KRAUCH's activity (Exh. 138, NI 4718, Book 6, English page 16, German page 30). With this letter MILCH notifies KRAUCH that he had informed General GOERING of his visit to Oppau, that GOERING was particularly interested in questions of this nature and therefore intended to invite KRAUCH at an early date for a discussion of these questions. The Prosecution mentions in this connection that KRAUCH had forwarded a copy of this letter to SCHMITZ. While the relevant document in the German document books does not contain any reference whatsoever which might justify this assertion, the English document bears the following note in parenthesis at the end of the first paragraph:

"Translator's note: handwritten marginal note:
Extract of letter to Dr. SCHMITZ para. 2 of
original."

Therefore this note reveals that only the second paragraph of this letter - which has no bearing on MILCH's visit to Oppau and his report to GOERING at all, but deals with an entirely different question - was forwarded to

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the defendant SCHMITZ. This incident is not mentioned here because it is considered of special significance, but only because it shows what means the Prosecution has to resort to in order to support its argumentation in this regard.

During the cross-examination of the witness ESTER on 12 April 1948, the Prosecution also attempted to prove that a particularly close personal relationship existed between the defendants KRAUCH and SCHMITZ (English transcript page 11166, German page 11295/96). As the entire examination revealed, this relationship was by no means as intimate as might be assumed from the first statement of the witness, as SCHMITZ - until the outbreak of war - spent an average of six months every year away from Berlin and KRAUCH also travelled very frequently and for long periods on account of his professional activity (English transcript page 11191/92, German page 11301/02). It is furthermore shown that this contact was of a purely personal nature and did not arise in connection with their profession or business. Nor does this relationship affect KRAUCH's clear statement to the effect that the information he had transmitted to the I.G. was closely confined to matters relating to the I.G. and - particularly in the case SCHMITZ - contained no reference to the entire activity of the Four Year Plan^{or} of the KRAUCH offices.

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In this connection the Defense SCHMITZ has to point out a particular lack of evidence for which it was not responsible. On the occasion of her examination on 12 April 1948 the witness ESTER stated (English transcript pages 11179 and 11186/87, German pages 11287 and 11296/97) that she had kept files where all business and private meetings of the defendant SCHMITZ were recorded as of 1928 without omission and furthermore, that all journeys of the defendant SCHMITZ during the same period were entered in a book. The Defense tried unsuccessfully to locate these very important data, as they would have proved how slight and infrequent SCHMITZ's contact was with the few leading personalities of the Third Reich, whom he ever met at all, while no connection with all the remaining ones existed in any case. The witness ESTER stated that she delivered this book containing her record of SCHMITZ's journeys as well as the above-mentioned files to Allied officers. Since then these documents cannot be located. It is the opinion of the Defense that in view of this lack of very important evidence, for which it is not responsible, no conclusion a priori may be drawn charging the defendant in connection with this question.

Finally, in order to establish a close connection between the defendant SCHMITZ and the German activity in the sphere of armament, the Prosecution refers to the fact that SCHMITZ was subject to special secrecy regulations

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(Exh. 149, NI-703, Book 6, English page 62, German page 105). Thus the Prosecution proves that it is in no way acquainted with conditions in Germany. Such secrecy pledges were made by many hundred thousands of Germans, for instance automatically by all members of the Aufsichtsrat of such firms which were working by order or in the interest of the Wehrmacht in some form, and such secrecy pledges are probably made in all countries of the world either in the same or in a similar manner; they are in no way suitable as proof of the close connection - alleged by the Prosecution - between the defendant SCHMITZ and the above-mentioned German activity in the armament sphere. The fact that these measures were not effected at the initiative of the I.G. but were based on official instructions is furthermore revealed in the affidavit of MUEENCH, dated 13 March 1948 (Def. Exh. 167, DAG Doc. 35, DAG Doc. Book III, page 24), which must also be referred to generally with regard to the meaning of the secrecy regulations, their extent and practical effects.

Moreover, if the Prosecution attempted to prove that the I.G. had endeavored to dominate the Economic Groups because the latter participated in the planning concerning the German mobilization for the war (Exh. 497, NI-8507, Book 24, English page 7, German page 10), this argumentation is also erroneous and misleading. The Economic Groups represented the industrial self-administration and their collaboration

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in the German mobilization measures by no means constituted their principal task, but only a secondary sphere of activity which they and the competent Reich offices ^{to them} had assigned/in the course of their existence by official order.

(Compare in this connection the statement of the witness EHRMANN during the cross-examination by the Defense on 7 October 1947, English transcript page 1740, German transcript page 1725/26).

Moreover, the Prosecution has furnished no evidence whatsoever to the effect that the defendant SCHMITZ had taken any measures on the basis of KUEHNE's letter which was sent to him and that the candidate suggested by KUEHNE was appointed chief of the Economic Group Chemistry. This was never the case, in fact.

Furthermore, the entire material submitted by the Prosecution by no means shows a very strong initiative of the IG and its representatives in the various Economic Groups and the Reich Group Industry. At any rate, the collaboration of the leading personalities of the IG was less than the important position occupied by the IG within the chemical industry and the entire German industry would have warranted.

(Compare in this connection the statement of MANN on 31 March 1948, English transcript page 10282/83, German page 10419).

In connection with the establishment of a magnesium plant in Aken, the Prosecution submitted among others an affidavit of Dr. STRUSS, dated 2 June 1947 (Exh. 98, NI-8317, Book 5, English page 74, German page 82) which contains the assertion that SCHMITZ

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had given Dr. PISTOR (the member of the Vorstand who was competent for the technical sphere in the field of light metals) a kind of unlimited power of attorney for the continuation of the negotiations. Reference is made to the material dealt with in the Closing Brief for the defendant BUERGIN in connection with all general questions pertaining to this magnesium plant; with regard to this particular allegation of the witness STRUSS, attention is directed to the affidavit of Dr. PISTOR, dated 24 March 1948 (Schmitz Exh. 84, Schmitz Doc. 84, Schmitz Doc. Book V, page 49). As revealed in the statements of the witness who is well acquainted with the subject in question, this allegation is entirely unfounded. The witness states:

"Geheimrat SCHMITZ, who directed the financial affairs of the I.G., would never have had any authority to make such a general decision. But besides that I remember exactly that Herr SCHMITZ held a very cautious attitude toward the field of magnesium and its alloys since its development had required an unusually high outlay in costs, and also displayed this caution toward the new project."
(Schmitz Document Book V, page 50/51)

The witness also states that it was partly due to this attitude of SCHMITZ that the investment of the IG's own capital was renounced for the greater part and that extensive financing to the corresponding amount was secured for the building project from government funds instead.

The question of the activity of the DAG and its subsidiaries in the sphere of powder and military explosives as well as all questions pertaining to this subject

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are dealt with in a special Closing Brief DAG which was submitted by the Defense and which, among other matters, also refers to the special relationship between the defendant SCHMITZ and the DAG-Konzern as well as to the connection between the IG and other firms concerned with powder and explosives. Full reference is made to this document.

The Prosecution furthermore submitted a number of documents which were apparently to prove that SCHMITZ had been informed concerning the activity of the IG within the Four Year Plan and in connection with German re-armament, and that he co-operated in this field by giving his agreement to the necessary resolutions and by making the required capital available.

(Compare in this connection the minutes of the AR meeting of 17 October 1936, Exh. 530, NI-8200, Book 27, English page 52, German page 45, when SCHMITZ reported on the tasks of the IG in the field of raw materials under the Four Year Plan. Furthermore the minutes of the AR meeting of 2 June 1939, Exh. 681, NI-8202, Book 32, English page 36, German page 31, when reference was made to the extensive expenditure in connection with the construction of the production installations. Also minutes of the meeting of the Vorstand on 25 September 1941, Exh. 686, NI-5813, Book 32, English page 51, German page 52, as well as TEA meeting of 30 June 1943, Exh. 678, NI-4856, Book 31, English page 84, German page 144, when questions concerning production and pertaining to the newly established plants were discussed. Finally the memorandum concerning a meeting of the IG Director BRENNEL, Legal Dept. Ludwigshafen and KRAUCH in July 1936, Exh. 679, NI-7833, Book 32, English and German page 1, when the former mentioned a promise made by SCHMITZ with regard to the financing methods for the establishment of an installation in the plant Doerberitz.)

In his capacity as a member of the Vorstand, the defendant SCHMITZ participated in the resolution concerning the new installations to be established by the IG, and was in particular informed as to the financial consequences of the erection of these new installations within the entire enterprise.

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Emphasis, however, must be laid on the fact that IG's main activity in this connection lay in the technical sphere and that, therefore, negotiations, as far as one could speak of such and not of official orders which IG in the same way as all the rest of the German economy was obliged to carry out, were under the main direction of the competent technical colleagues. In as much as the Prosecution has submitted the two above-mentioned protocols of the board of directors, reference must be made to the statements on the purely representative function of the Chairman of the Vorstand in its relationship to the board of directors, which merely acted as mouth piece for the opinions held by the whole Vorstand after these had been ascertained on a democratic basis (see page 3 of closing brief). Reference must also be made to statements on the compiling by the Vorstand of reports to the board of directors (see pages 118/119 of closing brief).

Apart from this, it is by no means to be assumed that IG meekly followed all suggestions made by the government - as long as a certain freedom of personal decision still existed - nor, what is more, developed enough individual initiative to advance such problems. Reference should be made in this connection to Document SCHLITZ 77 (SCHLITZ evidence 77, SCHLITZ Document Book V, page 28), which clearly establishes that SCHLITZ, in agreement with his colleagues, repeatedly stressed the necessity for strictest economy and greatest reserve with regard to the investment-program above all in that decisive phase of the German Rearmament (1937-1939).

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as shown for instance by:

"He therefore finds it necessary to again make a serious appeal to the Betriebsfuhrer to check their investments and to limit it to the absolute necessities."

(SCHMITZ Doc. Book V, page 30)

The same interpretation prevails in the reports on TEL-meetings in the Vorstand (SCHMITZ Document Book V, pages 31-34). If one takes into consideration the necessity for an extremely cautious and reserved formulation in these matters, due to the conditions prevailing in Germany, then it becomes clear how concerned the directorate of IG was to keep their expansion program, based on official demands, within reasonable and organic bounds, and limited to absolute essentials.

The same applies in connection with the accusation by the Prosecution that IG procured and stocked essential war-materials. Here reference must be made to the Protocol of the Vorstand, dated 16 September 1936 (Evidence 2121, NI-15060), which clearly proves that the defendant SCHMITZ advocated in this sphere as well most cautious and reserved attitude by IG.

In attempting to represent the new foundation of the Kaufmannische Ausschuss (KA) (Commercial Committee) at the suggestion of and in agreement with the defendant SCHMITZ, as a coordinating measure aiming at IG's increased military preparation,

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(Evidence 361, NI-653, Book 41, English page 62, German page 113), the Prosecution has failed to establish any proof whatever. As a matter of fact the KA was an indispensable organizational counterpart to the TZA, which had always been in existence; and its revival had no connection with questions of German rearmament or possible military preparations. Nor is this statement (see also page 12 of closing brief) contradicted by the fact that the KA had to deal with all other central commercial problems as well as with measures such as those relating to the UK-Stellung (indispensability), the maintenance of stocks and so on which had become necessary as a result of official demands and order. This, in a modified form would likewise have been the case if the previously existing KA had not been revived.

Finally, reference has been made by the Prosecution - as evidence of the support given by IG to the government's plans of aggression - to IG's contribution, on 22 September 1938, of RM 100,000.- for the Sudeten German relief organization and the Sudeten German volunteer corps. (Evidence 834, NI-1318, Book 46, English page 36, German page 39) as also to the contribution, on 30 September 1938, of RM 500,000.- for expenditure in the Sudeten German region (Evidence 1046, NI-2795, English page 122, German page 28). In the Preliminary Memorandum Brief (part I, page 98), the Prosecution, in dealing with the first contribution, to begin with conceals the fact that this donation was made to the Sudeten German relief organization and the Sudeten German volunteer corps, asserting

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that the total amount was made available for the Sudeten German volunteer Corps, the latter being referred to as

"an auxiliary military organization charged with
promotion of disturbances and clashes."

It must in the first place be stated here, that the Defense is not responsible for the fact that it is not in a position to supply detailed information on the basic motives leading to ^{the} formation of these ^{two} contributions. From the affidavit BLESSER of 17 March 1948 (SCHLITZ Evidence 79, SCHLITZ Document 79, SCHLITZ Document Book V, page 37) it must be deduced that data on these two donations still in IG documents center at Griesheim in existence after the collapse, were removed from there; and as the witness declares on page 38:

"I take it that the Prosecution in Nuernberg has taken possession of them."

It further follows from Dr. HOYER's affidavit of 24 March 1948 (SCHLITZ Evidence 80, SCHLITZ Document 80, SCHLITZ Document Book V, page 39), and from the affidavit by ESTER, dated 30 March 1948 (SCHLITZ Evidence 81, SCHLITZ Document 81, SCHLITZ Document Book V, page 42) that similar central contributions were by no means the result of IG initiative but the answer to corresponding demands by official, government or party organs. The affidavit by Dr. van WYCK-DIETZ, dated 4 April 1948, proves that in the summer and autumn 1938, collections were made in all parts of the Reich for the Sudeten German refugees

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and that the National Socialist Welfare organization established special banking- and Post check-accounts for this purpose, into which such payments had to be made. The two donations by IG do not therefore represent a special operation by IG but are merely a part of these collections made throughout the whole territory of the Reich and the statements on such political contributions made on pages 53 - 55 of this Closing Brief apply equally to them. IG could not evade them and participation cannot therefore be considered either a political demonstration or a measure in pursuit of IG's own aim. Moreover it must be stated that the payment of RM 500,000.- took place after the Munich Pact and could therefore have no influence on political decisions previously made. It must further be ascertained that a criticism of these contributions must be based on the general interpretation at the time of their payment and not on the verdict at a later date. The Munich Pact, immediately after its conclusion, was not considered as an outrage committed by Hitler but as the result of state-craft displayed by all participants, and this not only in Germany but in the whole world, especially so in England, France and Italy as in the countries primarily interested in the conclusion of this pact. The enraptured orations with which CHAMBERLAIN and DALADIER were received by their own compatriots on their return from Munich

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and which found eloquent expression in the Press and on the Wireless, stamped the Munich events as a step towards the preservation of peace, fully justifying a claim by the defendants that they, too, viewed this donation from a similar angle. Both donations must essentially be considered from the social point of view. If, in connection with the first donation, mention is made of the Sudeten German volunteer corps as well as of the Sudeten German relief organization, it must, to begin with, be taken into consideration, that according to the affidavit by van WICK-DIETZ, everything points to the inclusion of this organization in the IG contribution, because the official collection was launched under this designation. It is of greater importance, however, that in September 1938 there was as yet no LIT judgment which defined the character of the Sudeten German volunteer corps and that, on the contrary, this volunteer corps was at that time, and in view of publications in Germany, considered, as an -- in fact insufficient -- attempt at a self-help action on the part of the sorely pressed Sudeten Germans. At any rate the Prosecution has submitted no evidence that the defendants, and the defendant SCHLITZ in particular, had any knowledge, at the time when the donations were made, of the nature of the Sudeten German volunteer corps such as was established in the LIT verdict. Finally, it must be emphasized that the fact of these contributions not having been decided upon by the Central Committee but by means of an agreement with, and on the suggestion of SCHLITZ, with simultaneous notification to members of the ZK and other members of the IG Vorstand,

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does not exactly deviate from customary proceedings. It was entirely within SCHMITZ's authority as financier to grant such donations - particularly if there was a special urgency, and the next meeting of the ZA and of the Vorstand, was not due to be held for some long time ahead - and to inform the members of the ZA and of the Vorstand of the decision made, as was done in the case of the two donations mentioned above. This procedure was adopted in numerous other cases and in different spheres by the competent members of the Vorstand and was fully authorized by the standing orders of the Vorstand. SCHMITZ was in such cases, in the habit of making sure of BOSCH's agreement.

(See in this connection affidavit KILLE, of 8 September 1947, SCHMITZ evidence 25, SCHMITZ Document 25, SCHMITZ Document Book II page 41 stating that, previous to 1933, SCHMITZ took the necessary steps in connection with donations "on being told by me that BOSCH had given his consent").

At the conclusion of the actual statements in connection with Count I of the indictment, such essential documents of evidence submitted by the Prosecution as contain references to SCHMITZ - are here - in so far as these have not been referred to in detail above - summarized in order to give a survey, and counter-balanced by having defense evidence noted against each item.:

1. Agreement between IG and the Government of the Reich concerning manufacture of synthetic petrol, dated 14 December 1933 (Evidence 92, NI-881, Book 5, English page 9, German page 12), and, pertaining to it, letter by IG to the Reich Economy Ministry dated 14 December 1933 (Evidence 93, NI-319, Book V English page 15, German page 40).

See in this connection the closing briefs of defendants BUETEISCH and GATTIMELU.

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2. Protocol of the meeting of the Commercial Committee on 10 February 1936 regarding the foundation of the Norddeutsche Hydrier Werke (Exh. 520, NI-5620, Book 26, English page 79, German page 117)

See in connection with this the statements by the defendants ter Meer and BUETEFISCH in their closing briefs.

3. Affidavit by STRUSS of 12 June 1947 regarding the foundation of the Buna plant of the IG (Exh. 547, NI-7241, Book 28, English page 21, German page 27).

See in this connection the statements by the defendants KRAUCH and ter Meer in their closing briefs.

4. Memorandum of 23 October 1940 concerning the cooperation of the IG in the Norwegian production of aluminum and light metals. (Exh. 586, NI-8034, Book 30, Engl. page 67, German page 84)

See in this connection the statement by the defendant BUERGIN in his closing brief.

5. Interrogation of KNIERIEL regarding the purchase of gasoline from the Standard Oil at a value of 5.20 million. (Exh. 731, NI-4690, Book 39, English page 79, German page 127)

See in this connection the statements by the defendant v. KNIERIEL in his closing brief, and the evidence dealt with therein.

6. Agreement between IG, Standard Oil N.J., S.I.G. Company and Standard Oil Company, of 9 November 1929. (Exh. 942, NI-10550, Book 42, English page ?, German page 1).

Agreement concerning the division of markets (Gebietsaufteilungsvertrag) between IG and Standard Oil, of 9 November 1929. (Exh. 943, NI-10430, Book 42, English page ?, German page 26)

Letter from TEAGLE to SCHLITZ and v. KNIERIEL, of 9 November 1929. (Exh. 944, NI-10432, Book 42, English page ?, German page 40).

See in this connection the statements by the defendants ter Meer, v. KNIERIEL and BUETEFISCH in their closing briefs, and the evidence dealt with therein.

7. File note for Colonel THOMAS, of 29 October 1936, concerning the construction of a small magnesium factory of the IG in England. (Exh. 1010, NI-622, Book 43, English page ?, German page 206)

See in this connection the statement by the defendant HAEFLIGER dated 15 March 1948 (English transcript page 9130, German transcript page 9229), and the statements by the defendant BUERGIN in his closing brief.

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8. Affidavit by GATTINEAU of 13 March 1947 concerning propaganda activities of the IG. (Exh. 26, NI-4633, Book 44, English page 14, German page 11).

See in this connection the statements by the defendant GATTINEAU in his closing brief.

9. Minutes of the meeting of the Working Committee on 11 January 1937 concerning annual contribution of the IG towards various German organizations abroad. (Exh. 797, NI-4864, Book 44, English page 147, German page 243)

Minutes of the meeting of the Working Committee on 24 June 1937 in which SCHMITZ reported about contributions from the Central Committee towards a German university in Latvia, and a German school in Japan. (Exh. 79, NI-4865, Book 44, English page 154, German page 254).

Minutes of the meeting of the Commercial Committee on 20 August 1940 concerning the activity of the Economy Department. (Exh. 360, NI-6160, Book 47, English page 24, German page 51).

Minutes of the meeting of the Commercial Committee on 12 November 1940 concerning material from the Economy Department for Government and Military Authorities. (Exh. 866, NI-6112, Book 47, English page 71, German page 141)

Minutes of the meeting of the Commercial Committee on 11 March 1938 concerning travels abroad by IG employees. (Exh. 893, NI-5261, Book 48, English page 100, German page 150).

Minutes of the meeting of the Commercial Committee on 5 November 1937 concerning v. FLUEGGE's orient trip. (Exh. 366, NI-6418, Book 49, English page 6, German page 10).

See in this connection ILGNER's statements during his interrogations from 16 - 19 March 1948 as well as the statements in his closing brief and the evidence dealt with therein.

10. Minutes of the Vorstand meeting on 25 September 1941 concerning counter intelligence measures by the IG. (Exh. 86, NI-5813, Book 49, English page 95, German page 132)

See in the connection statement by SCHNEIDER during his interrogation on 19 February 1948 as well as the closing brief of the defendant ILGNER.

4. The legal theory of the Defense with regard to the charges sub-Count I.

In order to avoid repetition, this closing brief will not deal in detail with a legal appreciation of the evidence as submitted by the Prosecution in support of Count I, nor with the counter-evidence submitted by the

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Defense; it will only state in short the principal legal theory of the Defense with regard to this point,

In the opinion of the Counsel for the defendant SCHMITZ, the Prosecution has not been able to prove that the attitude of the defendants, and in particular that of the defendant SCHMITZ - viewed objectively - fulfilled the real facts of Law No. 10 of the Control Council regarding any forms of participation in the planning, preparation, starting and conduct of aggressive wars as realized by the National Socialist leadership. However, it is decisive, that - even if one were to concede the actual facts - the subjective facts are missing in every case, in particular the knowledge of the aggressive plans of the political leadership, which the IMT expressly made a prerequisite for any conviction under Count I of the Indictment. The Prosecution nowhere even tried to prove a positive knowledge of the aggressive plans of the Government on the part of the defendants, and in particular of SCHMITZ.

(In fact it can be seen from the affidavit by SEIDEL, of 31 December 1947, SCHMITZ Exh. 49, SCHMITZ Doc. 49, SCHMITZ Doc. Book IV, page 10, that even a few days before the outbreak of war, the defendant SCHMITZ was fully convinced that there would be no war. He can therefore have had no knowledge of any relevant plans).

If, as a substitute for the individual proof of this knowledge, the Prosecution states that the aggressive plans of the Government were common knowledge, reference is made to the evidence submitted on 4 May 1948, by Attorney-at-law Dr. BOETTCHER

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on behalf of the entire Defense under the heading "Common Knowledge" (Documents concerning German Foreign Policy, volume I and II, Defense Exh. 53 - 147, Doc. C.K. 1 - 92), the interrogation of the witness FRITZSCHE on 4 May 1948 (English transcript pages 13380 - 13402, German transcript pages 13677 - 13705), and that of HUENKEMANN on 4 and 5 May 1948 (English transcript pages 13408 - 13410 and 13495 - 13502, German transcript pages 13705 - 13707 and 13787 - 13796) where this thesis of the Prosecution is refuted.

The indictment sub Count I must also be refuted: there has been no evidence in the case of the defendants - and particularly not in the case of the defendant SCHMITZ - that they know about the aggressive plans of the Government.

(With regard to the details, reference is made to the motion by all Counsels of 17 December 1947, and the other statements by the Defense of 9 January 1948 and 14 and 20 April 1948 in answer to the statements submitted by the Prosecution in this respect, as well as the plea by Dr. v. METZLER on behalf of all Counsels on 2 June 1948).

If the Prosecution submits that after the outbreak of the war with Poland the aggressive character of the German policy must have been clear to ^{everyone} in Germany, and that, therefore, any further co-operation with the German armament industry - at least from this date onwards - constituted one of the forms of participation in the conduct of aggressive wars as defined by Law No. 10 of the Control Council, it is sufficient - apart from all other reasons which speak against this opinion of the Prosecution - to say that the terror prevailing at this time in Germany constituted

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a state of emergency excluding any juridical responsibility for every individual businessman and therefore also for the defendants.

(See in this respect the references sub Count III, page 116 of this closing brief).

In order to characterize the pressure already exercised a long time before the outbreak of the war, it will be sufficient to refer to Prosecution Document PS-1301 (USA 123 Exh. 401, Book 19, English page 30, German page 34) according to which GOERING made the following statement at a meeting on 14 October 1938:

"Memoranda were of no help, he desires only positive proposals. If necessary, he is going to convert the economy with brutal methods in order to achieve this aim. The time has come when private enterprise can show whether it has a right for continued existence. If it falls, he is going over to state enterprise without any regard. He is going to make barbaric use of his plenipotentiary power, which was given to him by the Fuehrer."

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Count II of the Indictment: Spoliation and Plunder.

Sub Count II, the Prosecution has brought the charge of spoliation and plunder against the IG, i.e., against the defendants. The Prosecution submits that the attitude of the IG with regard to this count constitutes the facts of a war crime and crime against humanity according to article II, 1b and c of Law No. 10 of the Control Council, and simultaneously the facts of a crime against peace according to a) of the same legal regulation; all measures of the IG. in this respect represent - in the opinion of the Prosecution - an integral part of the planning and conduct of aggressive wars.

In accordance with the suggestion made by this Tribunal that the various facts raised by the Prosecution should be dealt with individually the principal legal questions connected with the charge of spoliation and plunder as well as the individual facts such as Francolor, Rhone-Poulenc, Horsk Hydro etc., will be dealt with individually and in a uniform manner in the closing briefs of these colleagues who have been entrusted with this task by the Defense as a whole.

The Counsel for the defendant SCHMITZ therefore waive a discussion of the facts involved and their legal aspects and confine themselves to the task of presenting to this Tribunal the principal attitude

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of their client in this respect; they refer only in so far to the individual facts submitted by the Prosecution as these are concerned with SCHWITZ and make a statement of his personal attitude towards these facts necessary. With regard to all other questions, reference is made to the statements of those colleagues who are in charge of the various problems on behalf of all Counsels for the Defense.

1. The general attitude of the defendant SCHWITZ towards spoliation and plunder.

The Prosecution has submitted the unproven assertion that, besides the individual cases dealt with, there was also an additional criminal act, namely: the plan for looting the European Continent. No doubt the Prosecution did not lack phantasy in developing this conception; however, it is all the more clearly established that it deviated from the realms of realities and drew a dream-picture which has no connection whatsoever with the actual facts.

If, however, one were to concede, for the sake of argument, that the assertions of the Prosecution are true - would it not be more feasible to suppose that the lust of the IG for

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spoliation and plunder would first have begun wherever this could have been carried out at once and without difficulties, namely by taking over the enemy industrial participations in Germany, insofar as they fell within the sphere of interest of the IG. The defendant SCHMITZ's attitude in this respect, which is symptomatic for his general attitude to the charges raised by the Prosecution sub Count II, has been clearly and distinctly described in the affidavit dated 10 December/1947 of the former State Secretary at the Reich Ministry of Economy, Dr. Johannes KROHN, (SCHMITZ Exh. 46, SCHMITZ Doc. 46, SCHMITZ Doc. Book IV, page 6). The witness who in 1941 was appointed Reich Commissioner for the administration of enemy property in Germany, makes the following statement:

"It was my duty to exercise control over the administration of the entire enemy property within the German Reich. The administration was a kind of trusteeship. The enemy property was to be safeguarded and preserved in its entirety. I had to see to it that these principles were everywhere uniformly adhered to and that enemy property rights were not violated.

Influential agencies, notably the Reichsleitung (Reich Administration) of NSDAP, high Party functionaries, the Plenipotentiary of the Four Year Plan and the Reich Ministry of Economics pointed out that German property in enemy countries, especially in America, was disposed of by compulsory sale. They, therefore, demanded that in Germany the administration of enemy property under trusteeship be abandoned and that this property become German property. I emphatically refused to comply with those demands. In order to inform myself of what was really happening abroad and what the German entrepreneurs thought on this question I made enquiries of leading persons in German economic life. Thus, I had two or three long conferences with Geheimrat Dr. Hermann SCHMITZ of IG Farbenindustrie-Aktien-Gesellschaft. On these occasions, Geheimrat SCHMITZ repeatedly and emphatically stressed that the administration of enemy property purely under trusteeship was to be maintained and that it should be conducted after the fashion of trusteeship over property of absent persons (Abwesenheitspflegschaft) and that especially any compulsory transfer of enemy property into German ownership must be avoided."

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(SCHMITZ Doc. Book IV, page 6/7.)

As the witness points out furthermore, he was able to refer particularly to the statements of the defendant SCHMITZ in the course of his struggle and it is therefore partly due to him that enemy property remained under custodianship till the end and that enemy property in Germany was not touched.

The witness furthermore emphasizes that an American English commission which took over and checked the files of witness Dr. KROHN's office, has expressly established this fact. The statement of the witness KROHN is however, also of particular importance from another aspect with regard to the evaluation of the defendant SCHMITZ's basic attitude in relation to the charges made under count II, as it allows us to perceive SCHMITZ's motives, at least one of the crucial motives, for his attitude. The witness states that during conversations the defendant SCHMITZ repeatedly emphasized his conviction that the maintenance and re-establishment of mutual confidence between German

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and foreign economy was more important than any profit possibly resulting for the German economy from the acquisition of enemy property, and that decent and honest German trustee administration of enemy property was decisive for the maintenance and re-establishment of international confidence in the German economy.

How could the defendant SCHMITZ have thought that this aim could be achieved if the German industry and, above all, the IG, had been robbing and looting abroad. In this connection it is important to point out that the meetings with SCHMITZ referred to by the witness KROHN took place from 1941 onwards, i.e. at a time when, according to the Prosecution, the spoliation had already been terminated or was in full progress. SCHMITZ's attitude was motivated only by the above basic- and not utilitarian - considerations; this is apparent from the fact which is probably known to the Court, that e.g. American plants in Germany represented about ten times the value of German plants in USA.

2. The "New Order".

In order to support the opinion that the various alleged acts of spoliation in occupied territories were inspired

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by a uniform plan for the spoliation of the whole European Continent, the Prosecution mainly refers to suggestions submitted by the IG under the heading "New Order" - at the request of the Reich Ministry of Economy - for the establishment of economic connections with a number of countries in the chemical sector.

(See Prosecution documents in Book 51, Exh. 1048-1054 and 1056).

The reasons for the elaboration of these suggestions, as well as the practical importance of these papers are dealt with in detail in the closing brief by the defence of the defendant v. SCHNITZLER. Concerning the defendant SCHMITZ it need therefore only be pointed out that, according to the minutes, he did not take part in the 33rd meeting of the Commercial Committee on 28/29 June 1940 (Exh. 318, III-6293, Book 45, English page 140, German page 185), when the question of the "New Order" was dealt with for the first time at the request of the Reich Ministry of Economy, and the basic trend of these suggestions was discussed. Nor did the Prosecution furnish any evidence to the effect ^{that} he helped in the preparation of the plan concerning the various countries; this was not the case, since financial questions pertaining to his sphere of authority did not enter into it and since he would not have been in a position to evaluate details of these suggestions, such as questions pertaining to patents, customs and quotas, because he was

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not sufficiently familiar with these subjects and the conditions; these suggestions had, on the contrary, been drawn up by the competent IG Departments - at their own responsibility - for their sphere of activity, in accordance with the principles of management applied within the I.G. Furthermore, from the very beginning SCHMITZ - as revealed in statements made during his interrogation by the Prosecution, which however were not submitted - considered this order of the Reich Ministry of Economy merely in a theoretical light, since in his opinion, preliminary conditions for "peace planning" did not exist.

(The statement of the defendant HAEFLIGER on 16 March 1948, English transcript page 9190, German transcript page 9293, shows that this opinion of SCHMITZ was shared by other people).

As a matter of fact, during these proceedings several witnesses have confirmed that these written suggestions, once they had been submitted to the Reich Ministry of Economy, were never again discussed between IG and the Ministry or other agencies.

(See in particular the statements of Frank-Fohle on 13 October 1947, English transcript page 1946, German transcript page 1935, and SCHLOTTERER on 27 January 1948, English transcript pages 5894 seqq., particularly 5862/63, German transcript pages 5894 seqq., in particular 5908/09).

Moreover, these suggestions in no way constituted the basis for the events considered incriminating by the Prosecution, which is particularly evident in the case of Norway,

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since it follows from Prosecution Exhibit 1191 (NI-7784, Book 65, English page 1, German page 1) - page 35 of the original - that these suggestions concerning Norway could not have been forwarded to the Reich Ministry of Economy before the fall of 1941, if at all; i.e. at a time when the negotiations concerning the Norsk Hydro/Nordisk Løttnestall- transaction had already been concluded.

In other cases too, e.g. France, it becomes clear that the negotiation which actually took place had absolutely no connection with the suggestions of the "New Order" and were based on the opinions held by both parties; furthermore, they led to entirely divergent results.

3. The accusations of the Prosecution concerning the acquisition of assets abroad which had formerly been seized by the Reich.

The Prosecution divides the cases of spoliation it deals with, into two groups: such cases when, according to the Prosecution, the works in question were seized by the Reich or an agency acting for the Reich, and later acquired by the IG from this agency, and such cases when in the opinion of the Prosecution, spoliation took place in apparently legal form, i.e. in accordance with an agreement, but when these apparently legal measures assumed the character of spoliation due to the pressure applied in the preceding negotiations.

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The Prosecution deals with the attitude of the IG in connection with Russia, Poland and Alsace-Lorraine under the first group. In none of the cases referred to under the first group did the Prosecution establish any connection between the defendant SCHMITZ and the charges; therefore the defence need not deal with these accusations in the closing brief. Reference is merely made to the evidence submitted by the defendants who are personally concerned as well as to the legal evaluation of the facts in the relevant closing briefs.

In principle, SCHMITZ's defence only wishes to point out that particularly in the evaluation of these facts, the knowledge of the illegality of conduct which is considered incriminating, is of special importance. In all cases mentioned above the German Reich has carried out the seizure of property by legal orders. It may be left open whether - seen objectively - the measures of the Reich were in keeping with the principles of International Law or not. Even if it ^{is} assumed that this was not the case, it would be necessary to ascertain furthermore that this illegality of the governmental measures was known to the respective defendants at the time when they made their decisions, because otherwise,

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at least the actual element of crime is lacking. In this connection it has to be considered that at first each citizen can ordinarily rely on the legality of governmental acts, unless special facts arouse his suspicion; However, no submission has been made by the Prosecution in this respect.

Here is another important point: In particular the defendants without legal training, who knew the IG organization and therefore that the individual sale combines had extensive legal departments with trained jurists at their disposal, could rest assured that legal questions involved in individual transactions were being reviewed by experts and that the results of such an examination would be given due consideration. As long as no doubtful cases were submitted to them, they could consequently assume, without neglecting their duty, that the legality of the procedure had been examined and that there were no objections.

Then there is the additional legal question whether spoliation as a criminal fact had not been eliminated by governmental seizure and whether, looked at from the aspect of international law, the acquisition of such works which had been seized, was not merely an action subsequent to the crime and consequently not punishable. Regardless of whether the transfer of property from the German Reich to the individual enterprise in Germany

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was effective according to civil law, it is beyond doubt that the sale of the works by the German Reich did not harm the interests of the original proprietors, since this damage - i.e. loss of property - had already been caused by the official seizure and since the legal position of the previous proprietor was not changed by further transfer.

Finally, with respect to the question of whether - and to what extent - the transactions were known to members of the Vorstand who were not directly concerned, reference is made to the statements of the defendant HAEFLIGER on 15 March 1948 (concerning Poland, English transcript page 9178, German transcript page 9280, concerning Alsace-Lorraine English transcript page 9184, German transcript page 9296, concerning Russia English transcript page 9186 German transcript 9298).

4. The accusation of spoliation in "apparently legal form".

In the second group, the "apparently legal exploitation" the Prosecution has made its accusations under the headings Austria, Czechoslovakia, Norway and France.

a. Czechoslovakia and Austria.

With regard to Czechoslovakia and Austria, the Tribunal made a decision in the afternoon session of 22 April 1948 (English transcript page 12194/12195,

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German transcript page 12435) to the effect that the facts alleged by the Prosecution - even had they been proved - do not constitute crimes against humanity and are also inadequate to constitute a war crime, as they concern incidents which occurred in territory not occupied by Germany during the war.

The defense of SCHLITZ deals with two aspects connected with these charges only because they are of importance for the general evaluation, regardless of the fact that they are no longer the subject of the Proceedings.

The Prosecution has submitted the documents NI-10581 (Exh. 1113, Book 54, English transcript page 61, German page 60) and NI-9282 (Exh. 1069, Book 52, English transcript page 54, German page 73) connecting SCHLITZ personally with these incidents. With regard to the first document the defendant HIEFLIGER stated in the witnessstand on 16 March 1948 (English transcript page 9205, German transcript page 9309/10) that the fact that SCHLITZ had been mentioned as a participant in the negotiations on behalf of the IG was an error since SCHLITZ had merely greeted one of the Czech executives, the President of the Zivnostenska Bank briefly for the sake of courtesy, but had not himself taken part in the negotiations.

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In the second document containing the Protocol of a Resolution of the Commercial Committee on the dismissal of non-aryan employees in Austria, mention is made of this resolution being passed "in accordance with directives by Geheimrat SCHMITZ". Against this it has been clearly proved from affidavits Dr. KRUEGER, dated 31 December 1947 (Schmitz Exhibit 51, Schmitz Document 51, Schmitz Document Book IV, page 23) and Dr. FRANK-FAHLE, dated 2 January 1948 (Schmitz Exhibit 52, Schmitz Document 52, Schmitz Document Book IV, page 29), as also from the witness KRUEGER's cross-examination on 9 April 1948 (English transcript pages 11140/41, German transcript pages 11190/91) that the defendant SCHMITZ had no authority to make a decision on the sphere in question and that, for this reason alone he could not have issued any directives. As a matter of fact, his name has been mentioned in connection with this protocol merely - as expressed by the witness KRUEGER - to add the weight of the defendant SCHMITZ' authority in a matter which had involved i.e., in difficulties on account of its reluctance to comply with the wishes of the Party.

b. Norsk Hydro-Nordisk Lettmetall.

Detailed reference is made in the evidence submitted by the Defense of the defendant ILGNER and its actual and legal justification in the Closing Brief of the Defense with regard to events in Norway, under the heading Norsk Hydro/Nordisk Lettmetall. The defendant SCHMITZ had no direct part in the implementation

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of this transaction, since he was not personally involved in either current negotiations with the Norwegian group nor with the representatives of the French Norsk Hydro shareholders. The declaration by the defendant ILGNER on 19 March 1948 (English transcript page 9642, German transcript page 9766) is not in opposition to this statement since he merely asserts that SCHMITZ had seen Herr KALLENBERG once or twice in Berlin on the latter's journey to Paris and back, and that he also assumed that AUBERT, when he came to I.G. with his SOS in the autumn of 1940, had seen SCHMITZ, since such visits were a matter of courtesy. As further proved by ILGNER's statement (loco citato) SCHMITZ's share in these matters was primarily based on his obligations as member of the Styre of Norsk-Hydro and, as far as there were any general financial considerations in connection with I.G., on his position as I.G.'s leading financial representative. His direct collaboration was therefore limited to his assent, as member of the Styre of Norsk Hydro, to the resolution passed by the administration on the nature and execution of an increase in capital for Norsk Hydro and the latter's participation in Nordisk Lettmetall. It must be stressed in this connection that all these resolutions were passed unanimously, that is to say with the full agreement of Norwegian and French Styre-members (see Closing Brief Dr. ILGNER). The defendant SCHMITZ attached vital importance to this fact since

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the Norwegian members of the administration in particular were naturally best able to judge the situation and interests of Norsk Hydro then and there, and SCHMITZ was particularly anxious that these things should be taken into consideration.

(See statement ILGNER on 19 March 1948, English transcript page 9642, German transcript page 9766; also statement OSTER on 7 April 1948, English transcript page 10749, German transcript page 10895. The latter stresses the fact that AUHERT was the decisive personality at Norsk Hydro and would never have accepted an opinion contrary to his own, and that SCHMITZ, like himself, had always agreed with AUHERT's proposals, the more so since relations to AUHERT were of a most confidential nature. This fact is borne out by the circumstance that I.G.'s holding of Norsk Hydro shares was always represented by AUHERT. See Closing Brief ILGNER, page 93.

Moreover, the defendants SCHMITZ and OSTER were fully justified in this attitude, because the basic interests of both I.G. and Norsk Hydro ran parallel. See statement ILGNER on 19 March 1948, English transcript page 9645, German page 9768).

The defendant SCHMITZ's participation on behalf of I.G., which covered the protection of general financial points of interest, manifested itself in practice in his presence at meetings of the Commercial Committee and of the I.G. Vorstand, where he was informed on negotiations and, as all other members of the Vorstand, took part in the resolutions passed by the I.G. Vorstand. The reports rendered directly in this connection by members of the Vorstand who took part in these negotiations could never lead him to suspect that, in consideration of the categorical demands of the Reich, to which I.G., as every one else, had to submit, illegal pressure had been brought to bear on any foreign partner participating in the transaction or even that, as things were, this

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partner's convictions could be opposed to the measures taken. Nor could he suspect that the French considered as inadequate the compensation offered to them for the rights of preemption which had been concluded in the nature of a bargain with the French by the Swedish President of Hydro, in order to avoid any appearance of pressure. The members of the Vorstand directly concerned have, during their examination in the witness-stand, emphatically declared that there could be no question of any such pressure nor of any complaints about the fairness of the right of preemption price. As a matter of fact, the right of preemption fixed at 310 francs (see Evidence 1212, NI-10640, Book 65, English page 104, German page 164, where the figures contain numerous errors to be proved by evidence of the Prosecution) had been assessed generously. 310 francs were equivalent to RM 15.50 or, at a rate of exchange of RM 0, 57 for one Norwegian Crown, 27.02 Norwegian crowns. Based on the nominal value of 180 Norwegian crowns per share, this amounted to a price of 15% per right of preemption. As a matter of fact the drop in the rate of exchange due to the increase in capital - including the drop in the rate of exchange resulting from the emission of the 43.05 %, to which the right of preemption did not apply - did not amount to 15 % but only to 13 %, as shown by the following computation:

The entire increase of capital amounted to approximately 50 %, that is to say two old shares corresponded to one new share. On the basis of the Paris rate for Norsk Hydro shares

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of 140 %, the following result is obtained:

2 old shares at 140 %	= 280
1 new share at 100 %	= 100
<hr/>	
3 shares = approximately 127 %	= 380

If - and this would have been possible - on the basis of statute regulations dealing with the partial exclusion of the shareholder's right of preemption - the price for the right of preemption had been computed merely in consideration of the rights of preemption purchased - that is to say excluding the 43,05 % - (i.e. in the proportion of 4 new shares for 15 old ones) - this would have resulted only in a drop in the rate of exchange and with it a right of preemption price of 8.4 %. In making the valuation it must further be considered that dividends for the new shares would not be paid for 2 years, and that new payments would therefore be invested in the enterprise without returns for this period.

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The Prosecution in Exhibit 2000, has submitted an affidavit by the defendant HAEFLIGER, which incorrectly describes the participation of the defendant SCHMITZ. His statement that SCHMITZ authorized him to grant the German Reich a participation of up to 40 % in the Nordisk Lettmetall is already refuted by the Prosecution Exhibit 1193 (NI-8079, Book 65, English page 43, German page 84), Protocol of the meeting of the Vorstand on 5 February 1941, where it says among other things:

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"The Vorstand decides to agree, according to the attitude of the authorities in charge and if the worst came to the worst, to a settlement with 40 % for Norak Hydro, 30 % for I.G. and 30 % for Koppenberg".

And the defendant HAEFLIGER's statement that, with regard to the regulation of proportional participation in Norak Hydro, SCHMITZ "held the reins" ("die Fäden in der Hand hatte") is not in accordance with the facts. As stated by the defendant ILGNER on 19 March 1948 (English transcript page 9642, German transcript page 9766) and as confirmed in detail in the closing brief by ILGNER's defense, the I.G. and therefore also the defendant SCHMITZ decidedly played a passive part in the developments, since the Reich, that is to say, offices charged by the Reich, "had literally taken the reins out of his hands".

c. Francolor and Rhone-Poulenc.

Statements contained in the preceding paragraph on the participation of SCHMITZ in resolutions made by the Vorstand apply equally to the two accusations made by the Prosecution with regard to Francolor and Rhone-Poulenc. Here, too, the defendant SCHMITZ played no part at all in either negotiations with the French partners of the agreement or conferences with German or French government officials, and the Prosecution has made no attempt to prove the contrary. The defendant SCHMITZ's knowledge was therefore limited to the reports submitted to all members of the Vorstand by I.G. representatives directly engaged in the negotiations, in

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particular by the defendants von SCHNITZLER and MANN, while his own participation was limited to voting in the passing of resolutions within the Vorstand.

With a view to proving further knowledge by the defendant SCHMITZ, the Prosecution has merely submitted exhibit 2193, NI-790, a letter by the defendant von SCHNITZLER to SCHMITZ, dated 21 November 1940, in which von SCHNITZLER refers to the Francolor negotiations in a marginal note, while the real contents of the letter deal with other matters. These quite general remarks about the first day of the Wiesbaden negotiations, when - as evident from the letter - no reaction had yet been shown by the French, in no way justify the conclusions being drawn that any pressure was brought to bear on the French partners of the agreement on the occasion of this conference, or that this had been intended. Under these circumstances the defendant SCHMITZ could be certain that the report submitted to the Commercial Committee and the Vorstand gave a complete and correct picture of the essential development of negotiations. As stated by numerous defendants in the witness-stand, (see among others, TER MEER on 30 April 1948, English transcript page 13010, German transcript page 13304, HAEFLIGER on 16 March 1948, English transcript pages 9191/92, German transcript pages 9294/95), these reports in no way suggested that illegal pressure had in any way been brought to bear on the French partners of the agreement. Should this, however, have been the case - the statements by the defense counsels of the defendants directly implicated

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will prove that this question is merely a theoretical one - this fact could never be made the subject of a charge against the defendant SCHMITZ, since he had no knowledge of it, and it could not therefore have formed the basis of his consent within the Vorstand to the execution of the transaction.

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Count III of the Indictment: Slavery and Mass Murder.

Under Count III, the IG and thereby also the defendant SCHMITZ are accused of having participated in the National Socialist Government's slave labor program and of having made themselves guilty of incredible war crimes and crimes against humanity by the employment of these foreign workers, prisoners of war and concentration camp detainees and also by the inhuman treatment of these people. Just as this accusation by the Prosecution is serious, so it is unfounded regarding the defendant SCHMITZ.

In accordance with the division of work, agreed upon among the counsels for the Defense, other counsels will deal with the problems regarding the international law on the utilization of such labor from the impartial-scientific angle; the question of foreign civilian workers will be dealt with in the Closing Brief for the defendant SCHNEIDER, and the question of the employment of concentration camp detainees and prisoners of war in the Closing Brief for the defendant DIERFELD, so that these problems need not be dealt with here. Over and above that the Closing Brief for the defendant SCHNEIDER will deal with the question of guilt, too; the aspect which this guilt assumes when, for a fundamental legal decision, one bases it on the Prosecution's interpretation of law. We shall therefore not deal with this question within the scope of this Closing Brief, and shall confine ourselves

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to referring, in addition to the afore-mentioned, to the statements of the undersigned in the Final Plea for the defendant FLICK in the case before the US Military Tribunal IV, Case V, (Engl. tr. pages 10920 to 10931, Germ. tr. pages 10659 to 10668), in which especially the question of the state of emergency resulting from government terrorism towards the individual employee is discussed in detail.

(Regarding the effects of this general situation in relation to SCHMITZ, reference is further made to Dr. SINGER's affidavit, dated 21 March 1948, Schmitz Exh. 73, Schmitz Doc. 73, Schmitz Doc. Book V, pages 13 et seq., and particularly page 17).

1. The defendant SCHMITZ did not deal with questions of labor allocation within the IG, and was therefore not competent in that respect.

For that reason the following explanations merely make it clear that the defendant SCHMITZ did not deal with questions of labor allocation within the IG, and therefore was not competent in that respect, although he was aware of the fact as such that, on account of government labor allocations, foreign workers and prisoners of war and - later on, in one case - concentration camp detainees were employed in IG plants. However, he had no knowledge of any details of this labor allocation, neither did he ever hear that the IG undertook anything in that line on their own initiative without general government instructions. The Prosecution submitted as exhibits 1312 and 1313 the documents NI-6099 (Book 68, Engl. and Germ. p. 1) and

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NI-6100 (Book 61, Engl. p. 7, Germ. p. 8). They are extracts from the minutes of IG Aufsichtsrat meetings on 11 July 1941 and 30 May 1942. According to these minutes the defendant SCHMITZ in his capacity as chairman of the Vorstand reported as follows to the Aufsichtsrat on the labor allocation problems within the IG for the past financial year in his report on behalf of the Vorstand.

a. According to the minutes of 11 July 1941:

"The plants have to concentrate their efforts on obtaining the necessary labor; requirements would, generally speaking, be met by foreign workers and prisoners of war."

(Book 68, page 3)

b. According to the minutes of 30 May 1942,

"The lack of workers, especially skilled workers, had to be made good by longer working hours, the employment of women, foreigners and prisoners of war."

(Book 68, Engl. p. 8, Germ. p. 9).

So as to charge the defendant SCHMITZ with the responsibility for employing these categories of workers on his own initiative, the Prosecution turns these reports on the past financial year into an order for the future given by the defendant SCHMITZ to all IG agencies, both in the Indictment (No. 124, page 52) and in their Preliminary Memorandum Brief (Part III, page 16). The Defense must firmly oppose such an attempt. The concise wording of the above two quotations proves that they are subsequent reports

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on past happenings quite apart from the fact that elsewhere, especially in the defendant SCHNEIDER's Closing Brief, it will be shown that, in view of the state regulations governing labor allocation which were valid in Germany, there was no room for any independent initiative by the IG, and, therefore, for an instruction for which the defendant SCHMITZ was not competent in any case..

In the documents

Schmitz 54, (Schmitz Exh. 54, Schmitz Doc. Book IV, p. 36),
" 85 (" " 85 " " " V p. 53)
" 86 (" " 86 " " " V p. 57) and
" 87 (" " 87 " " " V p. 60)

the Defense proved in each individual case that the report by the Chairman of the Vorstand to the Aufsichtsrat was based on the fact that the individual chiefs of the sales combines and Sparten, the works managers and other central agencies of the IG were requested to submit a report on their tasks which should contain all suitable matters of interest to be reported to the Aufsichtsrat. On receipt of these documents the Central Committee Office compiled the report to the Aufsichtsrat for the defendant SCHMITZ by putting together the various individual reports, which were shortened considerably. SCHMITZ made only minor alterations in the report compiled by the Central Committee Office, he either shortened it, or added explanatory remarks from his own sphere of work,

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while he refrained from adding to, or commenting on the reports dealing with tasks outside his sphere, in accordance with the far-reaching independence of his colleagues in their own spheres of work. (In this connection see pages 9 and 12 of this Closing Brief). In actual fact the defendant SCHMITZ was not competent for, and never dealt with, the question of labor allocation which were typical of the matters decided on by the plants themselves, as may be seen from the statements dealing with his position and his special tasks in the "General Part" of this Closing Brief.

The defendant KUEHNE very clearly described the situation as it actually was, on 31 March 1948, (Engl. tr. p. 10223/24, Germ. tr. pages 10358/59):

"Q. Dr. KUEHNE, did my client, Mr. SCHMITZ, have anything to do with the technical, commercial or social management or supervision of the plants subordinated to you?

A. No, I wouldn't have tolerated it, and I would have objected to it had Mr. SCHMITZ entertained a thought of controlling my work at Leverkusen. I bore the full responsibility for Leverkusen, but naturally I had a strong will for independence and I was independent."

.....

"Q. Tell me, Dr. KUEHNE, as far as the labor allocation question was not settled by the governmental authorities, labor offices, etc., as far as something had to be handled by the plant management itself; for instance, any demand for labor, the placing of quotas, did the Vorstand of Farben then have anything to do with that question as such, and, Mr. SCHMITZ in particular?

A. No, I believe that it has repeatedly been explained here in this courtroom that in particular after 1933, as a result of the regulation for national labor, the plant leader alone was responsible for the procurement of labor.

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And as I already explained before, even if that had not been the case, I would have strongly objected if Mr. SCHMITZ had tried to interfere with my affairs.

Q. Do you remember whether at any time the Vorstand of Farben as such, or Mr. SCHMITZ in particular, had issued an order, even only a directive, or even a request, to the plant managements in order to employ foreign workers?

A. No; but that was neither his task nor did he have any right to interfere with such matters. The plant leaders had to register our labor demands with the Labor Office, and we had to take whatever labor the labor office could offer us."

Regarding the legal regulations existing in Germany in that respect, especially the law for Regulation of National Labor, and the practical effects resulting from such a law, reference is again made to the Closing Brief for SCHNEIDER. As the defendant SCHMITZ was not the Betriebsfuehrer within the meaning of this law, he did not take part in the Betriebsfuehrer conferences or in the meetings of the IG employers' Beirat. Neither was he informed of the matters discussed during those meetings. The affidavit made by the defendant SCHNEIDER on 22 April 1947 (Exh. 1329, NI-8849, Book 68, Engl. p. 90, Germ. p. 109) has been corrected by him during his interrogation in the witness-stand on 19 February 1948, to the effect that

"they (the minutes on the Betriebsfuehrer conferences and meetings of the employers' Beirat) were not sent to Geheimrat SCHMITZ."

(Engl. tr. p. 7402, Ger. tr. p. 7468)

Apart from that the defendant SCHNEIDER stated in the witness-stand on 19 February 1948 (Engl. tr. pages 7398/99, Germ. tr. p. 7464) that the question of the subsequent compulsory employment of foreigners was discussed in principle neither in the employers' Beirat, nor during the Betriebsfuehrer conferences, nor in the Vorstand,

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as there was no possibility of having any influence on the question, since everything was regulated by the state. The same applies to the employment of concentration camp detainees (Statements SCHNEIDER on 20 February 1948, Engl. tr. p. 7443, Germ. tr. p. 7503).

(In this connection see also the statements of the witness STRUSS on 20 November 1947, Engl. tr. pages 4059/60, Germ. tr. p. 4096/97, who confirms SCHNEIDER's statements regarding the Technical Committee).

Furthermore the Prosecution stated that questions connected with the employment of foreign workers, Poles and concentration camp detainees were regularly discussed by the Technical Committee and that the defendant SCHMITZ regularly, or, at least frequently, took part in the Technical Committee meetings, if not as a member then as a guest. The general questions of whether and to what extent those questions were raised in the Technical Committee has been answered in detail by several of the defendants, especially by ter MEER when he was in the witness box on 16 February 1948 (Engl. tr. p. 7129, Germ. tr. p. 7182). Reference is made to the treatment of this question in the Closing Brief ter MEER. Regarding the participation of the defendant SCHMITZ in the meetings, it is sufficient to refer to the explanations on page 11 of this Closing Brief, and further to the statements of the defendant ter MEER, made on 17 February 1948, in which he gives the following correction, or rather supplement, to his affidavit dated 30 April 1947 (ter MEER

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Exh. 237, ter MEER Doc. 75 (NI-5182), ter Meer Doc. Book III, page 78)

"I forgot to mention the name SCHMITZ. Of course, Herr SCHMITZ was just as little informed as Herr von KLEIN and Herr von SCHNITZLER about labor questions in the plant."

(Engl. p. 7173, Germ. p. 7231).

So as to prove the defendants' knowledge of the extent to which foreign workers, Poles and concentration camp detainees were employed, the Prosecution referred to their exhibits:

1557 (NI-3761-A, Book 68, Engl. p. 11, Germ. p. 13),

1558 (NI-11411-A, " " " " 12, " " 14),

1559 (NI-3762-A, " " " " 15, " " 16),

1560 (NI-11412-A, " " " " 18, " " 18),

as well as to an affidavit by Dr. Ernst STRUSS, dated 27 March 1947 (Exh. 1316, NI-4999, Book 68, Engl. p. 22, Germ. p. 20).

The first four documents are graphs showing the development in the total number of employees within the IG, while the last two show the employment figures for the most important IG plants on 1 August and 1 October 1944. In these tables, the employees are divided into 4 groups, which are made up as follows:

1. German workers,
2. Prisoners of war,
3. Foreigners,
- while in the 4th group
workers on loan to the IG,
~~foreign workers on loan to the IG.~~
Wehrmacht detainees and concentration
camp detainees are all listed
in one group.

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The witness STRUSS declares in his above-mentioned affidavit dated 27 March 1947 that he personally handed to the defendant SCHMITZ a copy of the charts on each occasion, such as exhibited in the TEA-meetings. These charts prove nothing else but the fact - and the extent - of the employment of foreign workers, prisoners of war and concentration camp inmates. In the case of the group of concentration camp inmates, however, it is very important to note that only one figure was recorded to cover both this and several other groups, so that particularly the gentlemen who did not deal personally with these matters, were unable to ascertain to what extent and in which IG plants concentration camp inmates were actually employed. In fact the defendant SCHMITZ actually had no knowledge of this. If the witness STRUSS has stated in his affidavit of 27 March 1948 that most persons in the last mentioned category were concentration camp inmates, then he has based this statement of facts on his personal knowledge. It was impossible for a reviewer to glean this information from the charts, as he himself definitely confirmed during his cross-examination on 20 November 1947 (Engl. tr. p. 4064, Germ. tr. p. 4091) - as these charts only served as a basis for credit grants through the TEA (Technical Committee). Moreover reference should be made to STRUSS' other statements during the same cross-examination by the Defense (Engl. tr. p. 4059, Germ. tr. p. 4096) which show that these charts were "never discussed" during meetings of the Technical Committee. There was therefore no reason for the defendant

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SCHMITZ, whose sphere of work did not include those questions, to deal with them.

The Prosecution has not proved SCHMITZ's knowledge of the fact that some of the foreign workers employed in the IG were not volunteers but had been forced to go to Germany. The defendant SCHMITZ definitely had no positive knowledge of this fact. He certainly wondered why, during the course of the war, the number of foreign workers in Germany allocated by government labor allocation offices was steadily increasing but considered any discussion on this subject as useless, because even definite knowledge that some of those workers had been forced to come to Germany, would not have opened up any possibility of discontinuing their employment, as any such attempt in the Third Reich during the war would, as an act of sabotage, have entailed loss of freedom or life.

The Prosecution has furthermore submitted an excerpt from the minutes of the meeting of the Vorstand on 29 October 1942 (Exh. 1322, NI-8266, book 66, Engl. p. 46, Germ. p. 48) from which it can be seen that, upon the request of the defendant SCHMITZ, the defendant MANN reported on a lecture given by the Plenipotentiary General for Labor Allocation, MUCKEL, before the Main Advisory Council of the Reich Group Industry on the position with regard to labor allocation, and the treatment, payment and housing of foreign workers.

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When submitting this document, the Prosecution declared that it proved that "the defendants were kept informed of the methods employed in the labor market" (Engl. tr. p. 3227, Germ. tr. p. 3249).

In this connection the defendant MANN submitted an affidavit of the former head of the Reich Group Industry, Wilhelm ZANGEN dated 5 March 1948 - Doc. No. 159 (Mann Exh. 314, Mann Doc. Book VI, p. 1) - showing the way in which SAUCKEL dealt with these problems before the representatives of German industry. In any case this lecture could not have aroused any suspicion; its substance could, on the contrary, only confirm the defendant's opinion that it was also the desire of the highest competent official agencies to solve this problem as well as possible in the interest of the foreign workers. Any misgivings regarding the procurement of this foreign labor, or their housing, alimentation and any other welfare measures, could thereafter, on the basis of MANN's report, not arise in the mind of the audience, nor, consequently, in the mind of members of the IG Vorstand. Moreover, the speech did not refer, in any way, to foreign workers brought to Germany against their will and by inhuman methods, nor could one gather from it that their employment infringed upon international rules of warfare.

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The actual impression made upon the audience, has been described by the witness ZANGEN as follows:

"I remember distinctly that the audience ~~showed~~ a sigh of relief, when we heard that Herr SAUCKEL maintained emphatically that the best possible should be done in all fields for the foreign workers, and that he pointed out that satisfactory production could only be expected from the foreign workers if everything was done on the part of the employers to make their stay in Germany as comfortable and pleasant as possible."

(Mann Doc. Book VI p. 2 cr. 2.)

2. The defendant SCHMITZ was not competent nor responsible for questions of housing, alimentation or other treatment of labor allocated to the IG any more than for the labor allocation.

The question of the treatment of foreign workers, prisoners of war and concentration camp inmates allocated to IG plants, will be dealt with by the counsels for the defense of those defendants who were in charge of the various plants. In any case it may be stated in summing up that the evidence submitted by the Defense has substantially corrected the sinister picture which the Prosecution attempted to draw, and that despite the difficulties in collecting the evidence, it has been possible to furnish proof that the IG, fully aware of their proud social tradition, which was not only known and recognized in Germany but throughout the whole world, tried to do everything in their power,

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to render the lot even of their foreign workers as bearable as possible. Isolated occasional excesses of subordinate agencies, in case they should have occurred, can hardly be avoided in such circumstances, even with the greatest care on the part of the competent supervisors. Competent and, consequently, responsible supervisors in the plant were the plant leaders, and the defendant SCHMITZ was not one of them, as has been mentioned above. He is therefore not responsible for any irregularities which might have occurred all the same, unless it could be proved that such irregularities had been reported to the defendant SCHMITZ or had otherwise ^{been} brought to his attention, and that, neglecting his general supervisory duties as a member of the Vorstand (cf. p. 7 of this Closing Brief), he had not taken any steps to eliminate these irregularities. The Prosecution did not submit such evidence. The only document, which deals with this question at all, is the affidavit by the defendant KRAUCH dated 26 February 1947 (Exh. 1332, VI-6060 Book 68, Engl. p. 102, Germ. p. 127) which reads:

"I have frequently discussed these conditions with Dr. Christian SCHNEIDER, who, in his capacity as plant leader (Hauptbetriebsführer) was of course greatly interested. Apart from this it can be said that all the gentlemen of the Vorstand showed great interest in these problems. Even Geheimrat SCHMITZ, who was actually a businessman, discussed these things with me frequently. I reported to Geheimrat SCHMITZ on the above-mentioned visits as well as any other visits. I told him to whom I had spoken and what improvements I had suggested."

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(Engl. p. 103, Germ. p. 128-129)

Alone the wording of this statement shows clearly that this information was not given to the defendant SCHMITZ because it came within his competency, and with the intention of causing him personally to take action, but because KRAUCH knew of SCHMITZ's social and very humane principles and the interest he showed in the troubles of the simple man; these reasons prompted him to talk to SCHMITZ personally about the experiences he had made when he inspected the various IG plants. During his examination in the witness-stand on 14 January 1948, the defendant KRAUCH expressed his opinion with regard to the general questions dealt with in his affidavit and especially concerning the incidents in Schkopau and Hoydebreck (Engl. tr. p. 5204-5207, Germ. tr. p. 5232-5234); upon being questioned by SCHMITZ's defense counsel on 16 January 1948 regarding the above-mentioned discussions with SCHMITZ, he first corrected himself stating that the term "after many visits" used by him was too strong and therefore not suitable, and that he should have used "some visits" instead in this connection. Then he was asked whether the discussions with the defendant SCHMITZ were intended to cause the latter to use his own initiative, he answered as follows:

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"It was not necessary for me to call upon the initiative of Geheimrat SCHMITZ, for whenever I had anything to discuss with the plants I did that myself and went to the directors, from whom I always got the greatest cooperation, especially those from I.G. Farben-Industrie, so that it was never necessary to appeal to higher authority, which SCHMITZ was, after all, as president of the Vorstand."

(English transcript page 5384, German transcript page 5413)

3. The connection between the defendant SCHMITZ and I.G.-plant Auschwitz.

The details in connection with the establishment of the I.G.-plant Auschwitz dealt with in particular detail by the Prosecution will be referred to in the Closing Briefs of the defendants immediately concerned. The defendant SCHMITZ had nothing to do with these events, his participation was restricted to granting the necessary funds voted by the Vorstand for the building of the installations. The fact that in this procedure a very general line was followed and that not even technical details, let alone other problems connected with the erection of the plant, were discussed, has been expressed time and again in the statements of the defendants immediately concerned. As far as the treatment of workers employed in Auschwitz is concerned, it is sufficient to point out here that neither the defendant BRAUCH nor any of the indicted members of the Vorstand - as is evident from their statements - (see statement BRAUCH of 14 January 1948, English transcript page 5243, German page 5369, ALBRECHT of 27 February 1948, English transcript

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pages 7846-7848, German pages 7922/23, SCHNEIDER of 20 February 1948, English transcript page 7442, German pages 7500/02, BUETEFISCH of 9 March 1948, English transcript pages 8783/84, German pages 8864/65),

on the occasion of their visits to Auschwitz found any grievances with regard to the treatment of foreign workers, P.O.W.s and concentration camp inmates employed there, and thus could not have brought them to the attention of the other members of the Vorstand. The same applies to the plant manager of Auschwitz, the defendant DUERRFELD, who, according to his own statement of 16 April 1948 (English transcript pages 11658-11676, German pages 11867-11888) found nothing to complain about and thus had no reason to submit such a report to his immediate official superior AMBROS or to the Vorstand as a whole. In view of this situation the remaining members of the Vorstand - for lack of any indications that might have aroused their suspicions - were justified in being convinced that conditions in Auschwitz were irreproachable, the more so as Dr. AMBROS, as well as Dr. DUERRFELD, had an equally good reputation as a man and as a technician, so that TER MEER even had AMBROS in mind as his successor.

(In this connection reference is made to the explanations on page 8 of this Closing Brief, according to which the statement of AMBROS in his affidavit of 29 April 1947, Exhibit 1419, NI-9542, Book 72, English page 47, German page 80,

"thus my immediate superior was Fritz TER MEER; my next superior was the chairman of the Vorstand, Geheimrat SCHMITZ"

does not coincide with the actual conditions).

The fact that on the other hand the concentration camp Auschwitz

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was of no importance as regards the choice of a location, and that the I.G. endeavored to build the plant with German workers as far as possible and particularly did not make the first move in regard to the employment of concentration camp inmates, but considered this question only after a decision had been made in principle against the I.G.'s wishes by a government order, is revealed by the statements of the defendants immediately concerned, to whose explanations in their Closing Briefs reference is made in this respect.

In addition it must be stated that the transfer of the native population, the Jews and Poles, was also not discussed in the Vorstand or the Technical Committee but in a smaller circle only and consequently did not come to the knowledge of the defendant SCHMITZ, although he would have had no opportunity to take steps against these government measures even if he had known what was happening.

(See statement SCHNEIDER of 20 February 1948, English transcript page 7444, German transcript page 7503, affidavit AMBROS of 29 April 1948, Exhibit 1419, NI-9542, Book 72, English page 47, German page 80).

It must further be mentioned that camp Monowitz, which was established later on, was never discussed in the Technical Committee (see statement of Dr. STRUSS in cross-examination of 20 November 1947, English transcript page 4060, German transcript page 4097).

In connection with the discussion of the happenings in Auschwitz the Prosecution submitted the affidavit of the defendant SCHNEIDER dated 22 April 1947 (Exhibit 1418, NI-7604, Book 72, English page 41,

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German page 68) which shows that SCHMITZ received the minutes of building conferences at Auschwitz. The defendant SCHNEIDER rectified this incorrect statement in the witness stand on 20 February 1948 (English transcript page 7444, German page 7503), quite apart from the fact that it was inconceivable that these minutes which dealt exclusively with technical matters should be passed on to SCHMITZ, the financial expert of the IG, when they were not even sent to the chairman of the Technical Committee and to all technical members of the Vorstand.

The witness ESTER in her affidavit of 9 November 1947 (SCHMITZ Exhibit 59, SCHMITZ Document 59, SCHMITZ Document Book IV page 48) actually declared:

"that Geheimrat SCHMITZ in all probability never once received such a record; I am quite certain that he did not receive such records frequently, and never regularly."

The witness HEIDEBROCK, who compiles the minutes on the construction conferences at Auschwitz, declared in his affidavit of 26 November 1947 (Schmitz Exhibit 58, Schmitz Document 58, Schmitz Document Book IV, page 46):

"But I think I can say today with certainty that Geheimrat SCHMITZ was not on the distribution list. As far as I remember, the most important offices in the Company to which copies of the minutes were regularly sent were the office of the Technical Committee in Frankfurt and the directorate of the Ludwigshafen plant, as well as the Ammoniakwerke Merseburg."

(Schmitz Document Book IV, page 47)

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The witness has furthermore pointed out that all doubts regarding this question could be removed if it were possible to obtain a record of the first or second construction meeting, ⁱⁿ which a decision was made and put into the records as to the people to whom the records were to be sent. The Prosecution submitted as its exhibits 1426 (NI-11115, Book 72, Engl. p. 98, Germ. 158) and 1428 (NI-11116, Book 72, Engl. tr. page 111, Germ. 182) the minutes mentioned by the witness HEIDENRICK, in which the following record was made regarding this question:

"In order to keep the building staff and the experts at the plants necessarily informed, procedure for the distribution of exchange of correspondence and documents will be established. But in order, on the other hand, not to increase correspondence unnecessarily three distributor stamps are arranged.

- 1.) one distributor for general questions of the whole works planning
- 2.) one distributor for the circle of experts of the Auschwitz Buna plant
- 3.) one distributor for the circle of experts of the Auschwitz motor fuel plant."

(Book 72, Engl. tr. p. 98, Germ. 159)

"The minutes on the construction conferences will be distributed according to distribution lists 2 and 3."

(Book 72, Engl. p. 112, Germ. 184)

From this and also from the affidavit AMEROS of 29 April 1947 (Exhibit 1419 NI-9542, Book 72, Engl. p. 47, Germ. 80) it is quite clear that defendant SCHMITZ was not one of the people who received these records. In order to avoid any misunderstanding, it is expressly pointed out

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that these minutes on construction conferences are not identical with the so-called weekly reports which definitely did not come to the knowledge of the defendant SCHMITZ either.

In connection with the history of the origin of the Buna plant, the Prosecution submitted the affidavit of the defendant KRAUCH of 13 February 1947 (Exhibit 1420, NI-4033, Book 72, Engl. p. 66, Germ. 105) in which KRAUCH states that the Vorstand of the IG would have been able to refuse the construction of the Buna plant at Auschwitz, but that, despite the fact that they knew that it was intended to employ detainees at Auschwitz, the Vorstand approved of the construction of the plant and made no objection to the employment of detainees. During his direct examination on 14 January 1948 (Engl. tr. pages 5227-5229 Germ. tr. pages 5254-5256) KRAUCH explained this by saying that his statement was of a purely theoretical nature; he simply wished to express that according to the stage reached in the negotiations at that time, when no instructions had as yet been received from the Ministry, the IG had had the theoretical possibility of not complying with the wishes of the Ministry; this, however, would certainly have caused the Ministry to issue the appropriate instruction immediately, since the IG was the only firm which was able to construct Buna plants, and nobody else knew of the Buna processes and was capable of creating such a plant. However, at the same time he pointed out that when making his

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theoretical statement he had taken a false starting-point, because in the meantime he had become convinced that an appropriate instruction from the Reich Ministry of Economy was already in existence at that time as is apparent from Prosecution Exhibit 1408-1413 (Book 72). Thus also the conclusions drawn by KRAUCH in this affidavit become void because the conditions on which he based his opinion did not exist.

The Prosecution finally submitted a number of excerpts from minutes of the Technical Committee meetings and the Vorstand respectively (Book. 73, 74, 75, 77) which prove something quite natural, namely that financial means for the progressive equipment of the plant at Auschwitz were discussed and approved of in the Technical Committee and in the Vorstand. The amount of these expenditures could not be estimated at first - as testified by the defendant DUERRFELD on 15 April 1948 (English transcript page 11564, German transcript page 11799), especially since expansions and supplementary constructions of the total plant were ordered several times by the government. For this reason the Technical Committee and the Vorstand, on several occasions, had to discuss the question of granting the necessary funds. As is apparent from the concordant statements of the various members of the Technical Committee and the Vorstand (amongst others AMBROS, 27 February 1948, English transcript page 7839, German page 7912, BUNTFISCH, 9 March 1943, English transcript page 8781, German page 8861) in these discussions, however, hardly any data were taken on technical details of the Auschwitz plant, whilst other problems were not discussed at all. The defendants agree in particular in their statement that problems of labor allocation

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in connection with Auschwitz were not discussed, nor were questions raised referring to the treatment of foreign workers and especially concentration camp inmates.

(But it must be mentioned in passing, since the Prosecution always refers to minutes that, according to the minutes, the defendant SCHMITZ did not take part in the TEA meeting of 19 March 1944 in which, for the first time, a report was made "on the planning of the large plant of Auschwitz". Exh. 1425, NI-11827, Book 72, English transcript page 88, German transcript page 143).

Finally the Prosecution, in submitting Exh. 1421, a letter from IG to the Reich Ministry of Economy (NI-11114, Book 72, English transcript page 68, German transcript page 107), has pointed out that a carbon copy of this letter had been forwarded also to the defendant SCHMITZ. This letter deals exclusively with financial affairs, whilst questions of labor allocation and particularly of the employment of concentration camp detainees are not mentioned or discussed in this letter.

The fact that through his work the defendant SCHMITZ actually had no direct connection with the events at Auschwitz is best illustrated by the defendant' DUERRFELD's statement in the witness box during his examination on 15 April 1948 (English transcript page 11554, German transcript page 11789) that he got to know the defendant SCHMITZ only in March 1945.

Inspired, obviously, by the desire to prove that, all the same, the defendant SCHMITZ had known about the employment of the Auschwitz concentration camp detainees under inhuman conditions,

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the Prosecution has submitted as Exh. 1523 (NI-10927, Book 78, English page 145, German page 170) a statement by the British Lt. Colonel Tilly dated 11 April 1947 and dealing under numbers 5-10 with a photographic album showing plant pictures. This album was handed over to SCHMITZ by the I.G. Auschwitz plant on the occasion of his 25 years' service jubilee in the middle of 1944, to give him some pleasure as well as a general picture of the installations, since SCHMITZ himself had never been at Auschwitz. In his statement which was made the subject of the Defense's cross-examination on 20 November 1947 (English transcript page 4034-4039, German transcript pages 4061-4066) the witness Tilly describes the discovery of this album in the defendant SCHMITZ's office, and states that SCHMITZ's secretary, Paula ESTER, and another secretary whose name was not given by him, were weeping when finally and after repeated questions, they handed over the album, giving as the reason for their attitude "that they were so ashamed of it". By this it is intended to give the impression that this shame was caused by the contents of the album. The fact that this is not so follows from the affidavits of Paula ESTER dated 9 November 1947 (Schmitz Exh. 55, Schmitz Document 55, Schmitz Document Book IV, page 38) and Charlotte THUEMEL - who is the defendant SCHMITZ's second secretary mentioned by Lt. Colonel Tilley - dated 28 November 1947 (Schmitz Exh. 56, Schmitz Doc. 56, Schmitz Document Book IV, page 41).

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On page 38/40 in Schmitz Doc. Book IV, the witness ESTER, whose statements are fully confirmed by the witness THUEMEL, gives the following explanation of her conduct toward the witness TILLEY:

"It is correct that it was only after repeated questioning that I produced this album. I did this because, under the influence of the revelations on the radio and in the press, I was, as a German, ashamed of the events in the Auschwitz concentration camp, as they were at that time described. My attitude in this respect had nothing to do with the album, as, in my opinion, this album contained nothing that could have given the slightest suspicion of events in the Auschwitz concentration camp, as they were described in the press and on the radio. So far as I can recollect, this album did not contain any pictures of Jews or concentration camp prisoners. At any rate, when I looked at the album once, shortly after Geheimrat SCHMITZ had received it as a present, I did not notice any such pictures."

The witness says also that this album had been lying open on a table in defendant SCHMITZ's Heidelberg study since the middle of 1944. It remained there when Schmitz, accompanied by von KNIERIEM and ILGNER, left Heidelberg in March 1945, and even after the occupation of Heidelberg by US troops. Only when, after the German collapse, radio and press made public the atrocities in Auschwitz concentration camp, referring again and again to IG's Auschwitz plant, did the witness remove the album from its place, doing so on her own initiative and without being told to do so by the defendant SCHMITZ; she placed it either at once or later in the safe, referred to by the witness TILLEY as a hiding place. The witness SVELSBERG too gives the following confirmation

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on page 44 of his affidavit of 14 December 1947 (Schmitz Exh. 57, Schmitz Doc. Book IV, page 43):

"I myself looked through the album in Auschwitz after its completion and would not have consented to undertake the presentation myself if there had been anything in it of an offensive or defamatory nature."

In another place (page 44) he says:

"So far as I know, this album contained no offensive or contemptuous representations or references to the Jewish race, or other groups of persons. It further contained nothing of which the recipient or anyone else need have been ashamed."

In view of these quite plain and clear attestations, the very vague statements of the witness TILLEY - made by the way only about 2 years after the actual event by request of the Prosecution, and restricted or rather toned down in the cross-examination - cannot be recognized as valid evidence in this trial, especially as even his own statements could perhaps be construed as expressing the idea that this album was in bad taste, but ^{no} proof that the defendant SCHMITZ was informed about criminal occurrences. Apart from that, counsel for the defendant SCHMITZ must also in this connection bring the motion to refrain from drawing conclusions in this connection, which are unfavorable to the defendant, as he is the innocent victim of a lack of evidence. Both the affidavit of the witness ESTER, and the testimony of the Prosecution witness TILLEY show that this album was handed out to Allied

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investigators upon their request; if it has meanwhile been lost, and can consequently not be produced in the trial, this must not be held against the defendant SCHMITZ.

Beyond this, the witness ESTER - again in agreement with the witness THUEMEL - gave the following testimony regarding the defendant SCHMITZ's knowledge of abuses in the treatment of manpower employed in Auschwitz:

"I should like in this connection to emphasize that, during my service for Geheimrat SCHMITZ, no correspondence or any other material whatever came into my hands which could have permitted of any conclusion that, in connection with the construction of the Auschwitz Works, there were abuses in the treatment of the workers assigned there, although, with very few and mostly accidental exceptions, the whole correspondence and all other official material sent to Geheimrat SCHMITZ passed through my hands. I have consequently not the slightest ground for supposing that Geheimrat SCHMITZ was aware of any such abuses, especially as he never made any remark to me in this sense."

(Schmitz Doc. Book IV, p. 40)

Neither did the Prosecution produce any evidence to the effect that the defendant SCHMITZ was informed of these matters, which, in fact, he was not. This does not only apply to any possible abuses in the treatment of the concentration camp detainees employed in the Auschwitz plant of IG, but to the same extent also to the gruesome atrocities in Auschwitz concentration camp

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itself, which became known after the German collapse. For a man of his professional standing, the defendant SCHMITZ led an unusually secluded life, which was completely filled by his work and apart from that devoted to his family. Affidavits SINGER of 21 March 1948 (Schmitz Exh. 97, Schmitz Doc. 97, Schmitz Doc. Book V, page 90), show that after the middle of 1943, SCHMITZ practically never left Heidelberg, for health reasons, with a consequent rupture of his former scant connections.

It is moreover a well-known fact that rumors never reach a person in an elevated social position as easily as the man in the street. At any rate, we have produced evidence in this trial to show that even such knowledge of the happenings in Auschwitz concentration camp, as transpired by rumor, was limited to an extraordinarily small group of people. Special reference is made here to the testimony of witness MUENCH on 11 May 1948 (Engl. tr. p. 14328-14330, Germ. tr. p. 14665-14668), who testifies that neither the German people as a mass, nor leading personalities who had no direct contact with Auschwitz, could have known of the atrocities perpetrated there.

4. Charges made by the Prosecution in connection with Fuorstengrube and Janina.

Under Count III, the Prosecution also dealt with the employment of concentration camp inmates in the mining installations of the

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Fuerstengrube G.m.b.H.. The defendant SCHMITZ had even less competence and thus responsibility for these occurrences in Fuerstengrube or in Janina - the latter being under the trusteeship of the former, and both being legally independent enterprises - than he had in the case of Auschwitz or any other IG plant, especially as he was neither a member of the business management nor of the Aufsichtsrat. Of course if he had learned of any abuses for which the administration was responsible, he would nevertheless have initiated action by the IG Vorstand. However, the Prosecution failed to bring evidence to this effect. The minutes of the Vorstand meetings, as introduced by the Prosecution (Book 73 and 80), deal only with commercial questions of purchase and extension of Fuerstengrube, but not with labor utilization questions.

In their efforts to establish that the defendant SCHMITZ, contrary to the actual circumstances, was at least indirectly implicated in these occurrences, the Prosecution presented a.o. the minutes of the Vorstand meeting of 2 March 1944 (Exh. 1551, NI-8258, Book 81, Engl. p. 43, Germ. p. 74), giving the following description in the index:

"BUETEFISCH reports on negotiations concerning the purchase of Janina mine for Fuerstengrube which up to that time operated the mines as 'administrative' rather than legal owner. The Vorstand authorizes ~~capital~~ letter to handle the final negotiations together with SCHMITZ."

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This description again does not do justice to the actual conditions as shown in the minutes, for Geheimrat SCHMITZ never had anything to do with the negotiations concerning the purchase of the Janina mine. As an examination of the minutes will prove, the actual version there is:

"The Vorstand authorized Dr. BUETEFISCH, in consultation with Geheimrat SCHMITZ to conduct and conclude the negotiations for procurement of capital in Pless."

(Book 81, Engl. p. 44, Germ. p. 80)

This shows clearly that the defendant SCHMITZ was not included in the purchase negotiations regarding Janina, but that the defendant BUETEFISCH was merely instructed to keep in touch with the defendant SCHMITZ regarding the capital procurement negotiations to be conducted with Pless.

To prove SCHMITZ' knowledge of certain occurrences regarding labor utilization in Fuerstengrube, the Prosecution submitted exhibit 1547 (NI-12015, Book 81, Engl. p. 22, Germ. p. 33), excerpt from a balance audit report of Fuerstengrube as of 31 December 1943, as well as a cover letter of the Central Auditing Department of 28 September 1944, which was distributed with this report by the Central Auditing Department to various IG agencies, including the defendant SCHMITZ. In its Preliminary Memorandum Brief (part III, Engl. p. 112/113, Germ. p. 112, 112a, 113) the Prosecution pointed out that this balance

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audit report compares employment figures at Furstengrube as of the ends of 1942 and 1943 respectively. It says:

"Among the workers listed in the 1942 figure are 1,206 'foreign labor and Jews'. Under the heading 'Foreign Labor and Concentration Camp Inmates' there is a blank. In 1943, after Farben took over the control, the column headed 'Foreign Labor and Jews' is blank, but the column headed 'Foreign Labor and Concentration Camp Inmates' became 1,007. When Farben came in the SS took over and the relatively free Jews disappeared."

Pursuant to this I must state the following regarding the defendant SCHMITZ: As the affidavit of Paul DENCKER of 15 April 1946 (Schmitz Exh. 102, Schmitz Doc. 109, supplementary Schmitz Doc. Book V, page 4) shows, the defendant SCHMITZ received 80 - 100 audit reports of domestic concern enterprises annually, up to 60 audit reports on annual balance sheets in the IG lodgers, and occasionally reports on balance audits of foreign concern enterprises. As the witness DENCKER emphasizes, these reports were very detailed and contained numerous notes of only secondary importance to SCHMITZ.

(As page 46 of the DAG (Dynamit AG) Closing Brief shows, the DAG balance audit report for 1938, for instance, consisted of over 100 pages.)

The witness DENCKER therefore declares:

"Owing to the bulk of the material and the tasks we had to perform, one could scarcely expect Herr Geheimrat Dr. SCHMITZ to find the time to study or even read every report in detail"

"For this reason I used to give a short description of these essential contents in the accompanying letter

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circulated with the auditing reports, which was to serve as information on the financial situation of the companies concerned and suffice as a general survey."

(page 5)

Regarding the purpose of sending the complete reports to the defendant SCHMITZ, the witness testified as follows:

"The auditing reports were forwarded to Herr Geheimrat Dr. SCHMITZ in order to collect reference material in the office of Herr Geheimrat SCHMITZ in Berlin and later Heidelberg, in addition to the archives of the Central Accounting Office in Frankfurt, which would give an insight into the economic and financial development of the subsidiary companies, and if required as for instance during meetings about the companies to be considered and would enable Herr Dr. Geheimrat SCHMITZ to supply any information required."

(page 4/5)

Under the circumstances, one cannot possibly expect the defendant SCHMITZ to have studied such a report in all its details, as would have been required in order to notice the facts brought up by the Prosecution. The following, however, is vital: the Prosecution interprets the statements on the employment figures of Fuerstengrube in the light of subsequent intelligence, i.e. knowledge which we now have of the atrocities forever connected with the name of Auschwitz. There is not the slightest proof - ^{and} - nor was it in fact the case - (see page of this Closing Brief) - that the defendant SCHMITZ had knowledge of these atrocities at the time.

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However, even with this knowledge there were numerous other plausible explanations for the separation of Jewish workers from the Fuerstengrube, as such transfers of workers were quite usual, specially under the increasingly difficult conditions of the last war years. Moreover, the Prosecution has not furnished any evidence whatsoever to the effect that the Jews who had left the Fuerstengrube had shared the fate of others of their race. Finally, reference must be made to the fact that - as revealed in the document itself - the balance sheet audit report was dispatched only during the last days of September 1944, therefore at a time when the German collapse had already started and the territory in question was occupied by Russian troops shortly afterwards. Thus, even if the defendant Schmitz had noticed something in connection with this report, which must be stated emphatically was not the case, there would have been practically no possibility of conducting investigations.

5. The other accusations of the Prosecution under count III of the indictment.

With regard to the remaining accusations under count III of the indictment, namely the human experiments and the use of Zyklon B for the extermination of Human beings in the concentration camp Auschwitz, the defense of the defendant Schmitz renounces the right to discuss the prosecution documents

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as well as the exonerating material submitted by the defense, as the prosecution itself did not establish any connection between the defendant Schmitz - first heard about Zyklon B here in Nuernberg - and these events.

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Count IV of the Indictment: Membership in the SS.

Under the indictment no charges are made against the defendant Schmitz in this respect as this count of the indictment is limited to the question of membership of the defendants Schneider, Buetefisch and v.d. Heyde in the Schutzstaffel (Protective Squad) of the National Socialist German Labor Party (SS), an organization which was declared criminal by the IET and in article 2, par. 1d of Control Council law Nr. 10.

Since however, reference is also made in the preliminary memorandum brief of the prosecution to the contributions of RM 100 000 each, which were made about three times - from 1942 onwards - to a "Special Account SS" at the Cologne Bank Stein & Co. at the instigation of the defendant Schmitz, the defense also considers it expedient to deal with these contributions under count IV of the indictment.

In this connection the defense wishes to establish expressly that the element of crime, which is dealt with under count IV of the indictment and which was determined in article 2, par. 1d of the Control Council Law Nr. 10, consists solely in membership in a criminal organization, so that the support given to a criminal organization - of which there is anyway no question in this case - does not constitute an element of crime as established under this regulation and as apparently wrongly concluded in the trial of Flick. Apart from that, the defendant Schmitz would not be convicted in this trial under count IV for reasons of court procedure,

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because ordinance Nr. 7 prescribes in article IV that the indictment must contain the (meaning: all) charges made against the defendant, while the indictment does not mention the Defendant Schmitz at all under count IV.

The following must be specially emphasized once more: The defendant Schmitz no more belonged to the party, as the SS, or the so-called "Freundeskreis Himmler" at any time. He never participated at any functions of this Freundeskreis (Circle of Friends), nor did he ever receive an invitation to do so.

(The IG as such did not entertain relations with the Freundeskreis either: the participation of the defendant Buotefisch - as he repeatedly testified during his examination (see specially Engl. transcript page 8834,

German page 8920) - "had nothing at all to do with the I.G. I did so for purely personal reasons, which I have explained here." By stating in his affidavit of 17 April 1947, Exh. 1976, NI-6233, that Krauch and Schmitz had approved of his participation in the Freundeskreis, the defendant Buotefisch is not giving the actual facts. Since it concerned a purely personal decision, there was no reason for Schmitz to either approve or disapprove. Therefore the defendant Buotefisch stated during the cross examination by the prosecution on 10 March 1948, (Engl. transcript page 8877, German page 8966) that he had not deemed it necessary to inform Schmitz of that fact, but that he had told him about it "some time".)

Therefore any discussion of the nature of this Freundeskreis is superfluous here. However, the prosecution is trying to connect the above mentioned payments with the Freundeskreis by

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dealing with them under the heading "Himmler's (or Koppler's) Circle of Friends" in its preliminary memorandum brief (part IV, page 4/5), thus endeavoring to create the impression that these payments were made through the banker v. Schroeder, as the treasurer of the Freundeskreis - in other words for the Freundeskreis - to Himmler for his unspecified "special tasks". But the prosecution failed to produce any proof for this allegation, while the defense of the defendant Schmitz has submitted plain evidence showing that, as the donor looked at it, these payments did not have the slightest connection with the Freundeskreis, that they were not intended for Himmler's special tasks", but that they were contributions for the definite purpose of assisting widows and orphans of members of the SS and the Police who were killed in action.

The following details are given so as to aid in the evaluation of the relevant evidence:

The events which led to the first donation of RM 100 000.- in spring 1942 are dealt with in the affidavit of Dr. S.R. Fischer, dated 29 January 1943 (Bueteufisch Exh. 240, Bueteufisch Doc. 194, Bueteufisch Doc. Book X, page 52). According to that it is perfectly clear that this donation was not requested for unspecified "special tasks" of Himmler, but as a donation for the definite purpose of assisting the families of SS and police members who were killed in action, namely at a time

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when there were already many widows and orphans of SS members due to the severe losses of the SS (compare Schmitz Exh. 88-90, Schmitz Doc. Book V, page 62-67). During his examination on 10 March 1948 (Engl. transcript page 8835 and following, German transcript page 8919 and following) the defendant Bueteffisch fully confirmed the description of the witness Fischer and emphasized specially that he believed Kranefuss' statement implicitly, according to which the requested donation was to be used for the assistance of needy families of SS members and members of the police who had been killed in action, and that he was therefore able to forward the request - which had been made to him - to Schmitz with a clear conscience. When asked specifically, Bueteffisch furthermore confirmed (Engl. transcript page 8858, German page 8945/46), that he did not mention Himmler's Freundeskreis to the defendant Schmitz even when he forwarded the request made by Kranefuss, but that he had described it as emanating from Kranefuss himself, who, like the defendant Bueteffisch, was a member of the Vorstand of the Braunkohlen Benzin A.G. (Brabag). He also confirmed that he personally did not connect the fact that Kranefuss approached him with the Freundeskreis, all the more since Kranefuss has simultaneously requested a donation from the witness Fischer - who did not belong to the Freundeskreis either - during the same conversation. The defendant Krauch also stated the following during his examination on 13 January 1948 (Engl. transcript page 5158, German transcript

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page 5182) with regard to this donation:

"I believe it was Christmas, 1941, when Geheimrat Schmitz visited my family and told me that he had been asked to make a donation of 100 000 Marks to the SS. Geheimrat Schmitz and I discussed this donation and came to the conclusion that the SS was a political unit of the Party and that we had no interest in making contributions to political organizations of the Party; and therefore we decided that we should refuse. A few weeks later I happened to meet Geheimrat Schmitz and he said that it had been decided to make this payment after it had been learned that it was to be used for charitable purposes, that is, for the care of widows and orphans of SS men."

It is therefore beyond doubt that the defendant Schmitz regarded the donation as a contribution for purely charitable purposes and that he approved it for that reason. Thus the donation is in accordance with the other contributions made by the defendant Schmitz

from his personal funds and - as far as he was able to dispose of them and express his desire - also from the IG funds, which fact finds its explanation in his basic social attitude. (Compare page 36/37 in this closing brief). Special reference must be made to the fact that the mitigation of wounds caused by the war and above all, the care of widows and orphans were the constantly repeating motive of his personal gifts. This became also the purpose designated by him of the firm's donation which was named after him on the occasion of his 60th birthday and his 25th service anniversary.

(Compare in this connection Schmitz Exh. 62 - 66, Schmitz Doc. 62-66, Schmitz Doc. Book IV, page 55 - 72 and Schmitz Exh.

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91, Schmitz Doc. Book V, page 68).

It is under such circumstances criminal or even to be considered morally wrong for the defendant Schmitz to include also the families of SS men who were killed in action, in his social welfare activities? To answer this question in the affirmative would mean to establish the principle of kinship responsibility and to make women and innocent children atone for the possible sins of their fathers; this would be in striking contrast to the principles of ethics and the Christian philosophy. Now the prosecution endeavors to confuse this perfectly clear picture - as the defendant Schmitz sees it - by purposely interchanging some few documents in Doc. Book 91 - which directly concern these donations and which the defendant Schmitz has seen - with a number of documents which were never shown to the defendant Schmitz; therefore the contents - inasfar as his information is concerned - cannot be used against him.

The defense wishes to make it quite clear that the defendant Schmitz previously never saw the Prosecution Exh.

1584 (NI-6125, book 91, Engl. p. 22, Germ. p. 25)
1586 (NI-6045, book 91, Engl. p. 24, Germ. p. 27)
1591 (EC-454, book 91, Engl. p. 34, Germ. p. 37)
1592 (EC-453, book 91, Engl. p. 35, Germ. p. 38)

which refer to the collection for the Freundeskreis but that he learned of the donation list and the amounts contributed only some time after the German collapse through press publications.

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The Prosecution, in spite of the obligation to prove the contrary, has not even attempted to furnish such a proof. A typical example of the above-mentioned confusion of evidence is the index to Exh. 1585 (NI-12400, Book 91, Engl. p. 23, Germ. p. 26) where we read:

"Memo of Farben's Central Finance Administration (Zefi), Berlin NW 7, to the Office of the Central Committee of Farben's Vorstand noting that Farben paid RM 100,000.- at the direction of the defendant SCHMITZ to the HIMMLER Circle of Friends, 12 February 1942."

As a matter of fact, this exhibit merely proves that the amount was paid into a "Special account" of the Bank J.H. Stein. All the rest is an inadmissible deduction from correspondence between HIMMLER and SCHROEDER which had never come to the defendant SCHMITZ's knowledge. The only letters known to the defendant SCHMITZ are the documents NI-2856 (Exh. 1594, Book 91, Engl. p. 40, Germ. p. 44) and NI-3807 (Exh. 1595, Book 91, Engl. p. 41, Germ. p. 45), letters by SCHROEDER to SCHMITZ, dated 16 March and 24 April 1944. In the first of these letters, in which the circle of friends is not mentioned at all, SCHMITZ is reminded of the fact that during the past years IG had made available for the Reichsfuehrer's special tasks the amount of RM 100,000.- annually, and is requested to repeat this contribution. The second letter gratefully acknowledges receipt of this amount. Who can dispute

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that the care for widows and orphans of fallen members of the SS and Police belonged to the special tasks of the Reichsfuehrer SS and should have been his first and foremost concern? The defendant SCHMITZ, therefore, in the absence of any indications which might have aroused his distrust - and it must always be remembered that he had no contacts with these circles nor with HIMMLER - could rely on the exactitude of the particulars with regard to the application of these funds, which were given at the time of the first request - for a donation. He could safely assume that the purpose of this repeated request was the same as long as he received no information to the contrary. Even if we suggest that the funds were used for purposes other than those previously specified, this could in no way be charged to the defendant SCHMITZ. As a matter of fact, SCHMITZ Exh. 88 (Schmitz Doc. 88, Schmitz Doc. Book V, p. 62), 89 (Schmitz Doc. 89, Schmitz Doc. Book V, p. 64) and 90 (Schmitz Doc. 90, Schmitz Doc. Book V, p. 66), proves that the funds made available on the suggestion of the defendant SCHMITZ were employed for the mitigation of social distress in the sense of the purpose as indicated to him.

It must appear strange that the defendant SCHMITZ alone made a decision on these contributions and that the Central Committee took no part therein. That, in view of the conditions of war, he deviated at the time from the customary procedure in dealing with requests for donations and merely issued

CLOSING BRIEF SCHMITZ

a report to the Chairman of the . Aufsichtsrat. . , must be explained by his desire to prevent the publicity given to these donations within IG, resulting in the possibility of other offices being induced to make contributions to the SS, concerning which it might not always be possible to ascertain their purpose in advance, as in his own case, and to make their payment dependent on the latter.

Apart from the fact that this social and charitable purpose of the donations would have sufficed to induce SCHMITZ to make such a grant, he had another motive in imparting knowledge of these contributions only to the defendant KRAUCH, as any indiscretion or carelessness would have given rise to the most serious consequences for him. This motive is based on conversations between the defendant SCHMITZ and Court SPRETI (Schmitz Evidence 53, Schmitz Doc. 53, Schmitz Doc. Book IV, page 32), in the course of which SCHMITZ received from the latter an affirmation of the well-known fact that money could also be an effective weapon in dealing with the SS. In view of the difficulties which IG was facing in general and in the Jewish question in particular (see references on pages 34/35 of this Closing Brief), it appeared to SCHMITZ a most opportune moment - as he had from the very first always stressed towards his American interrogators - for making a gesture to which no moral objection could be raised, namely

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in the form of this requested donation for the families of fallen of the SS in the hope that in a case of need this might prove efficacious. And, as established in the above-mentioned affidavit SPRETI and by the affidavit GIERLICH, dated 17 February 1948 (Bucofisch Evidence 235, Bucofisch Doc. 266, Bucofisch Doc. Book X, p. 16) the intervention with HIMMLER on behalf of Arthur von WEINBERG, which became indispensable a few months after the first collection of gifts, actually had the desired effect with HIMMLER.

Under these circumstances it is an entirely unjustified and incomprehensible accusation for which there is not a shadow of proof and which must therefore be rejected most decisively if the Prosecution in number 136 of the Indictment (page 58) declares:

"To insure the cooperation of the SS in the furnishing of concentration camp labor, FARBEN took steps to establish friendly relationships with the SS. In 1941 FARBEN made a contribution to the SS, through the 'Circle', of 100,000 marks and thereafter made similar annual contributions to the SS."

If this declaration had been founded on fact, the defendant SCHMITZ would have considered it to his advantage to make these contributions known within IG as widely as possible. But in reality he himself did not even inform defendant

CLOSING BRIEF SCHMITZ

BUETEFISCH, who had passed on to him this request by KRAEFUSS (see statement BUETEFISCH on 10 March 1948, Engl. tr. p. 8836, Germ. tr. p. 8921/22). The actual situation was therefore the following: Apart from KRAUCH, SCHMITZ was the only one who knew of the donations; at the same time he remained in absolute ignorance of the "negotiations" concerning the procurement of labor from concentration camps, whereas, on the other hand, those who - on account of official orders - had to deal with matters relating to the allocation of detainees, had no knowledge of these contributions.

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Count V of the Indictment: Collective Plan or Conspiracy,

In the opinion of the Defense, the Prosecution has submitted no proof that the accusation under Count I of the Indictment, namely of a participation in the planning, preparation and leading of aggressive warfare, is justified in the case of the defendant SCHWITZ. In default of Count I, however, there is even less foundation for an accusation of participating in the conspiracy to promote aggressive warfare. It is therefore merely as a precaution that the Defense refers, in this connection, to the statements, made on behalf of the Defense in its entirety, in the Closing Brief by Professor WAHL, as well as to the declarations on the same subject in the Final Pleas of Professor WAHL and Dr. von METZLER.

CLOSING BRIEF SCHMITZ

General Theory of Responsibility.

Detailed reference has been made in the "General Section" of this Closing Brief to the statements by the Prosecution in their Preliminary Memorandum Brief under the above heading, concerning the tasks of the defendant SCHMITZ and, based thereon, his responsibility. This reference was made in dealing with his position as Chairman of the Vorstand, in representing his personal sphere of work within the Vorstand, as also in outlining the importance of the administrative council. (See pages 1 - 18 of this Closing Brief).

As to the legal justification, reference is made to the legal opinion by Dr. Walter SCHMIDT (Defense Exh. 280) and by Professor Dr. MEZGER (Defense Exh. 281) as well as to statements dealing with this matter in the final plea by Dr. v. METZLER.

SUMMARY:

With reference to the statements made in this Closing Brief, the Defense of the accused SCHMITZ is of the opinion that their client must be acquitted on all counts of the indictment.

Nuernberg, 2 June 1948

Dr. Rudolf Dix

Hanns GIERLICHES

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*) Note to page 66

The decision by the Tribunal, dated 24 May 1948, on the admissibility of the statement by the defendant SCHMITZ, dated 17 September 1945 only reached the Defense when the corresponding part of the Closing Brief had already been completed. For this reason the Defense is submitting the Closing Brief in its original form.

CLOSING BRIEF SCHMITZ

CERTIFICATE OF TRANSLATION

18 June 1948

We, the undersigned, hereby certify that we are duly appointed translators for the English and German languages and that the above is a true and correct translation of Closing Brief Schmitz.

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		ETO No. 20081

" END "

Corrected Copy

MILITARY TRIBUNAL No. VI

Case VI

CLOSING BRIEF

for

Dr. Christian SCHNEIDER

submitted by
the Defense Counsel
Dr. Hellmuth DIX

*Letter from Defense Counsel
re corrections inserted*



Dr. Hellmuth Dix

Nuernberg, July 6th, 1948.

To: American Military Tribunal No. VI,
Justice Palace,
Nuernberg.

Re: Closing Brief for Dr. Christian Schneider, Case No. 6.

Dear Sirs,

I beg to hand over herewith ~~7~~ corrected copies
of the English translation of the above-mentioned Closing Brief.

Very respectfully,

H. Dix

(Dr. Hellmuth Dix)



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CLOSING BRIEF SCHNEIDER

I. Planning, preparation and waging of aggressive wars.

A. Planning and preparation.

1. Introduction

This closing brief will essentially follow the structure of the Prosecution's Trial Brief of December last year. Reference will be made to the essential parts of this Trial Brief, the indictment and the evidence concerning the defendant SCHNEIDER. Under counts II and III of the Trial Brief (part I) the Prosecution deals generally under the above-mentioned count of the indictment with the responsibility of private persons, the essential characteristics ~~elements of~~ *elements of* ~~of facts constituting~~ crimes against peace, the subjective angle *(state of mind)* and the meaning of command and compulsion. Reference is made on these points to the explanations given by the defense for the other defendants and to those given below in connection with count III A of the indictment.

2. Participation.

Under IV of the Trial Brief (Part I) the Prosecution accuses all the defendants - and thus also the defendant SCHNEIDER - of having committed crimes against peace within the meaning of Control Council Law No. 10.

a) Financial support.

In support of its viewpoint the Prosecution accuses the defendants under A of the Trial Brief on page 14 of having assisted Hitler to obtain power by giving him financial support and

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of having contributed towards enabling Hitler to consolidate his power by making considerable financial contributions in the subsequent period.

The Prosecution alleges that all contributions to the Party, and those made for political purposes had to be attended to by the Central Committee, which had to report to the Working Committee and later on to the Vorstand.

Accusations by the Prosecution

1. (Prosecution Exh. 56, Book 3)

The IG contributed RM 400,000.- to the election fund of the NSDAP on 1 March 1933.

Defense

2. (Prosecution Exh. 1585/1594/ 195, Book 91)

Contributions for Himmler to the banking house SCHROEDER.

1. and 2.

SCHNEIDER had no knowledge of the payment of RM 400,000.- or of further payments for Himmler to the banking house SCHROEDER. These payments were discussed neither in the working committee, which was formerly the authority for such matters, nor in the ~~Central~~ ^{Central} Committee or the Vorstand. The Prosecution did not furnish any proof whatsoever of this.

Statement ter Meer, transcript G. p. 6897, E. p. 6771/72

Statement HOEHLER, transcript G. p. 6263-71, E. p. 6207-15
G. p. 6406-07, E. p. 6348-50

3. (Prosecution Exh. 80, Book 4)

In 1933-1944, after Hitler had risen to power, 3.

^{made}
the IG./considerable financial contributions to the NSDAP and various party organizations, amounting to more than RM 40 millions.

These contributions were given critical examination, also with regard to their significance, during the direct examination of defendants

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HOERLEIN and ter Meer.

Statement HOERLEIN, transcript German pages 6263-71, English pages 6207-15
Statement HOERLEIN, transcript, G. pages 6406-07, English pages 6346-50
Statement ter Meer, transcript, G. pages 6897, English pages 6771-72

Furthermore it has been proved by other Defense Counsels and by the basic information that the amount of these contributions is of no significance at all in comparison with the turnover, profits, wage and salary amounts and social expenditures of the IG. Moreover, the Prosecution Trial Brief admitted on page 14 that the Winter Relief Work and Adolf Hitler Fund were proportionate assessments which affected the entire industry. It should further be mentioned that in the first years the Jewish members of the Aufsichtsrat v. SILSON, v. WEINBERG and BERTON also approved these contributions, compare o.g. Prosecution Exh. 78 and 79, Book 4.

4. Birthday presents to GOERING. 4.

(Prosecution Exh. 484-489, Book 22, transcript German pages 884/85, English pages 921-23)

The presents to GOERING prove how the IG. Farben - especially KRAUCH and SCHNEIDER - were in agreement with GOERING.

Of all these presents SCHNEIDER only knew of one picture. These presents were not

CLOSING BRIEF SCHNEIDER

discussed in the Central Committee or the Vorstand either as has been confirmed by the defendants ter Meer and HOERLEIN.

Statement SCHNEIDER, transcript German page 7402, English page 7339

Statement HOERLEIN, transcript German pages 6263-71, English pages 6207-15, German pages 6406-07, English pages 6348-50

Statement ter Meer, transcript German page 6897, English pages 6771-72

(Prosecution Exh. 484, Book 22 transcript German page 884, English page 921)

In his direct examination with regard to this GOERING biography,

SCHNEIDER proposes to honour GOERING KRAUCH stated that the author of the by distributing amongst the employees book, GRITZBACH, came to him and of the IG. 10 000 copies of a GOERING asked him to make use of the book biography.

as a gift to employees and workers.

KRAUCH passed this request on to SCHNEIDER.

It is erroneous to conclude from this that there was an ^{accord} ~~agreement~~ between SCHNEIDER and GOERING.

(Statement KRAUCH, German transcript pages 5442-43, English transcript page 5413)

5. (Prosecution Exh. 834, Book 46) Contribution to the Sudeten German Relief Work and Sudeten Free-Corps.
6. (Prosecution Exh. 1046, Book 51) Payment of RM 500.000 for the Sudeten German district.

5. and 6. These payments too were neither discussed in the Central Committee nor in the Vorstand. SCHNEIDER learned of them only after payment had been effected.

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Statement SCHNEIDER, German transcript
page 7402, English page 7339

Statement KORTLEIN, German pages 6263-71
English transcript pages 6207-15,

German transcript pages 6406-07,

English transcript pages 6343-50

Statement ter Meer, German transcript
page 6897, English transcript
pages 6771-72

Besides, witness LAMERS has also
stated that such payments could not
be eluded by industry.

Statement LAMERS, German transcript
page 5693, English transcript
page 5654.

b) Collaboration with the Wehrmacht.

Prosecution Trial Brief, pages 15 - 18.

The Prosecution alleges that from 1933-1939 the IG collaborated closely
with the Wehrmacht in building up German military power. From this
activity it infers that these defendants who took part in it, had know-
ledge of a war of aggression.

Accusation by the Prosecution

1. (Prosecution Exh. 101 Book 5
99 Book 5
140 Book 6

German transcript page 770,
English transcript pages 801-02
Prosecution Document Books 6 -10)

Establishment of a Military Liaison were explained fully and fundamentally
Office (Vermittlungsstelle W) for by KRAUCH and ter Meer on the occasion
the purpose of preparing the IG for of their direct examination, and for
mobilization.

The Defense.

- 1.

The organization, object and duties
of the Vermittlungsstelle W (VW)

this reason reference is made to
this here.

German transcript pages 5073 etc.,
English transcript page 5052
German transcript pages 6954 etc.,
English transcript pages 6885 etc.

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Apart from that different witnesses stated in this respect that the Vermittlungsstelle W was nothing else but what its name implied and chiefly dealt with forwarding mail and letters.

Statements STRUSS Germ. Transcript, page 1848, English pages 1861-63
Statements WAGNER, German Transcript, pages 552-4, English pages 581-4
Statements DIEKMANN, German transcript, pages 2195-96, English page 2202.

The co-operation of the Vermittlungsstelle W with the Vorstand of the Sperto chiefs was not very considerable.

Statements WAGNER German Transcript page 551, English page 580
Statements DIEKMANN, German Transcript page 2197, English page 2202.

Prosecution document exh. 141, book 6, number 4, confirms this.

2. (Prosecution exh. 29, book 3, p. 35, 2.
183, book 7, page 88,
239, book 9, page 1
Prosecution document books 6 to 10)

In this connection the I.G. made preparations for the mobilization, such as air raid protection measures, Mobilization plans for production, war supply contracts, ~~mass games~~ ~~exercises with models~~, secret military ~~stockpiling~~ patents, preliminary consultations, etc.

All these measures were based on official instructions, as is shown quite clearly by the secret report of the Reich Ministry of Economy, dated 30 September 1934. (Prosecution document exh. 716, book 38)

In this connection, too, KRAUCH and ter MEER made detailed

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statements

Statements KRAUCH, German manuscript, p. 5073,
English page 5053;
Statements LORMEER, German transcript, p. 6954,
English page 6885 et seq.

The Mobilization plans were based only on
official instructions.

Affidavit WAGNER, pros. exh. 142, book 6,
German page 64, English page 38
Affidavit KRUGER, pros. exh. 259, book 10,
German page 51, English page 39
Affidavit MURCK, pros. exh. 668, book 31.

The members of the Vorstand were never in-
formed directly about these Mobilization plans
by the specialists.

Statements DIEKMANN, German transcript p. 2197,
English page 2204.

Mobilization plans were drawn up by all
chemical plants in Germany.

Statements STRUSS, German transcript, p. 1841,
English page 1855.

The obligation to secrecy, too, was based on
official instructions, as may be seen from
contemporary documents in document book 7
of the prosecution.

A violation of this would have led to crimi-
nal proceedings against all I.G. specialists
in accordance with articles 88 to 93 of the
German penal code.

Statements WAGNER, German transcript, page 587,
English pages 617-18.

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map exercises (Planspiele)

The ~~exercises with models~~ at Leuna, as well as the air raid precaution measures, were ordered by the Luftwaffe and, naturally, were of a defensive nature.

Statements MILCH, German transcript, page 5366, English page 5337.

As is shown clearly by the prosecution's evidence the Vermittlungsstelle W was a clearing office for the purpose of directing the necessary contacts between the I.G. offices and the Berlin authorities. In no way did it have the importance with which the prosecution is crediting it.

Mobilization plans, obligations to secrecy, ~~exercises with models~~, etc., were measures which were ordered officially and were within the scope of Germany's general rearmament. They could easily be interpreted as precautionary measures for the purpose of defense. In any case no aggressive intention of the German government could be deduced from those measures. Similar mobilization plans for industry were carried out in other countries too.

c) Four Year Plan and economic mobilization.

Trial brief of the prosecution, pages 19 to 27.

In 1936 Hitler announced the Four Year Plan. KRAUCH was employed in connection with this plan, and from 1938 onwards he was Plenipotentiary General for Chemical Production (Gobochem).

Allegations of the prosecution

1. (Prosecution exh. 358, book 13, German, page 135, Engl., page 75)
Leuna was a Gobochem-plant.

Defense

1.
Because of this SCHNEIDER was in

CLOSING BRIEF SCHNEIDER

no way informed as to the character of the plans under the Four Year Plan. He only had to carry out the closely defined tasks within his ~~sparte~~ and his plant. Especially the prosecution book 7 shows that these were mostly ~~secret~~ ^{secret} or confidential official matters.

2. (Prosecution exh. 512, book 17) 2.

SCHNEIDER was official advisor of
KRAUCH.

This is not correct.

Statements KRAUCH, German transcript,
page 5442, English, page 5413,
ILGNER exhibit 192, book XI, page 87.

d) Creation and equipment of the German war machine

Trial brief of the prosecution, pages 26 to 43.

The prosecution maintains that, in view of the type of the products manufactured and the fact that the contracts and negotiations were negotiated mainly with military agencies, the defendants knew that the I.G.'s production was to serve the creation of the Nazis' war machine. The defendants must have known that the war machine was to serve the well-known national policy of expansion. The prosecution has taken 18 products from the production program of the I.G. which they consider as being particularly important for war. From these alleged facts and the intensive development of these products between 1933 and 1939 the prosecution draws the conclusion that the I.G. must have had some interest in a war.

Of these 18 products mentioned above, the following can be linked up with the defendant SCHNEIDER:

CLOSING BRIEF SCHNEIDER

nitrogen, methanol, gasoline and oils, toluol, lead tetraethyl.

Allegations of the prosecution

Defense

General synthesis

1. (Statements ELIAS, German transcript, pages 1347 to 48, English, pages 1372 to 74.)

The witness describes the importance which the development of the basic chemical processes for the manufacture of synthetic products from coal, water and air had for Germany, and states among other things that 84.5% of Germany's aviation fuel, 85 % of its motorcar gasoline and 100 % of its concentrated nitric acid, which is a basic chemical for all explosives, and 99 % of its equally important methanol were produced by the I.G.

- 1.

In 1938 the I.G.'s production of aviation fuel amounted to approx. 80 000 tons, i.e. approx. 80 % of the German production.

BUETEFISCH exhibit 19, book I.

The quantity in itself is insignificant, and a considerable percentage of this was used for civil aviation.

During the same year the production of motorcar fuel amounted to 358 000 tons, i.e. 12.3 % of the German consumption.

BueteFisch exhibit 18, book I.

The I.G. was the sole producer of concentrated nitric acid, however

the share of I.G. in
~~the total nitrogen production of~~

~~the I.G. for 1938/39, inclusive~~

of ammonium nitrate, amounted to only approx. 6 %, and their share in Germany's total nitrogen production was only 3.5 %.

Schneider exhibit 13, book VIII, table I; German transcript, page 8729, English, page 8645.

In 1938/39

CLOSING BRIEF SCHNEIDER

It is correct that the I.G.'s share of the German methanol amounted to 99 %.

2. (Prosecution exh. 261, book 9, German page 131, Engl. p. 104)

2, - 4.

BUETZFISCH, "without I.G. Farben, especially the I.G. production of synthetic rubber, fuel and magnesium, it would have been impossible for Germany to wage war."

The fact that a war was hardly possible without the following products of the department I: nitrogen, oils and methanol, is not denied. As has been stated before, the same applies for most of the industrial commercial war products. It is impossible to draw a clear dividing line between war materials and peace materials.

3. (Statements HANNECKEN, German transcript, page 981, English page 1020).

"Without I.G. Farben it would hardly have been possible to wage war."

Statements MORGAN, German transcript, page 706, English page 741.

4. The following exhibits were introduced by the prosecution in this connection:

701, 705, 707, book 37.

5. (Statements ELIAS, German transcript, page 1325, English, page 1348).

Nitrogen

5.

Without nitrogen not one ton of military explosives or gun powder could have been produced. Certain military explosives were completely dependent on synthetic methanol and ammonia.

This assertion, too, is correct for the above-mentioned reason, but also with the above limitations.

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6. (Prosecution exh. 715, book 37, German, page 163, English, page 152)

The U.S. Strategic Bombing Survey lists the ten most important chemicals in their sequence of importance for war as seen by the Germans, and states that nitrogen was the most important one.

7. (Prosecution exh. 592, book 33/525, book 12 / 1051, book 51)

The HABER-BOSCH method for the production of synthetic ammonia developed nitrates, the indispensable element for the production of explosives, and thereby enabled Germany to produce explosives independently of the imports of Chilean nitrates.

8. (Statements ELIAS, German transcript, page 1345, English, pages 1369-70)

The manufacture of explosives is dependent on nitric acid, a product of ammonia. The figures for ammonia are extremely important, as the ratio of the ammonia production at I.G. Farben rose to 70 % in 1937 and to 75 %

6.

6. Even if nitrogen did play a certain part in the war economy, its use for that purpose during the pre-war period was almost negligible, as will be proven later.

7.

That situation already existed after the first world war without the victors of that period having forbidden the production of synthetic ammonia or nitric acid in Germany. Statements MORGAN, German transcript, page 719, English, pages 751 - 52.

8.

The production figures quoted for 1932 to 1939 are correct. With reference to the rising tendency, the witness overlooks the fact that during 1928-29 the I.G.'s nitrogen production already amounted

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in 1943: The tonnage produced, expressed in metric tons, amounted to 281,000 tons in 1932 and rose to 554,000 tons in 1939.

9. (Statements ELIAS, German transcript, page 1346, English, page 1371.)

In 1934 the capacity for concentrated nitric acid was 120,000 tons per year, this rose continuously until 1939, when the peak was reached with 312,000 tons per year.

10. (Statements ELIAS, German transcript page 1346, English page 1371.)

After 1932, a large part of the increased ammonia production was used for explosives, gun powder and as a filling.

to 622,000 tons, a figure which was never reached again. It is misleading to choose the crisis year of 1932 as a basis for those observations.

SCHNEIDER exh. 13, table I. B. III.

9.

The production figures for concentrated nitric acid for 1934 and 1939 are wrong, as may be seen from SCHNEIDER exh. 13, table I, book VIII.

The technical nitrogen production of the I.G., in which concentrated nitric acid played only a certain part, amounted to 40,000 tons in 1934 to 1935 and 100,000 tons in 1936 to 1939.

10.

This opinion of the witness is absolutely wrong. SCHNEIDER exh. 13, table I, graph 7, book III, shows that in the field of explosives the nitrogen consumption amounted to approx. 4.4 % in 1933-34, and 6 % in 1938-39.

Statements STRUSS, German transcript, pages 4147 to 48, English, page 4119.

Statements ELIAS, German transcript, page 1376, English, pages 1401-02.

CLOSING BRIEF SCHNEIDER

11. (Pros. Exh. 616, book 34
German p.232, Engl.p.129,
Testimony ELIAS, tr.Germ.
p. 1350, Engl.p.1375-76)

Powder and explosive production was linked up with synthetic ammonia production in three respects. The principal explosives and fuels were all dependant on nitric acid or nitrates in one form or another, at least as regards their manufacture. Synthetic ammonia was the chief raw material for the production of nitric acid for nitration. In the first half of 1944 approximately 36% of the total synthetic ammonia output went into the explosive and propelling charge industry. The most important rival in the ammonia sector was the synthetic fertilizer industry.

12. (Pros. Exh. 127, book 6)

It appears that the Prosecution, by producing this document, tries to use the gradual increase in technical nitrogen production in 1937 as proof for the strong participation of Sparte I (Division I) in military production.

11.

The fact that in 1944, notwithstanding the great wartime increase in nitrogen production for the explosive sector, only 36% of the synthetic nitrogen production went into the explosive and propelling charge industry, proves nothing with regard to the prewar situation. (See section 10).

12. Apart from the insignificance

of the nitrogen allotted for the military sector, Schneider Exh.

14, book VIII proves that 3 months later, the situation as described in Prosecution exh. 127 had changed, the production of technical

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nitrogen having again dropped steeply. Schneider Exh. 15, Book VIII shows further that at a nitrogen meeting on 25 August 1939, that is 6 days before the outbreak of war, a plan for a large-scale expansion of nitrogen production for agricultural, i.e., for purely peace purposes, was discussed. This proves that the nitrogen producers did not even think of war at that time.

M e t h a n o l

13. Pros. Exh. 715, Book 37, 13.

Germ.p. 163, Engl.p. 152).

US strategic bombing survey lists the 10 most important chemicals in the order of their war importance as seen by the Germans, and states that methanol came second.

Neither is the importance of methanol for the explosive industry contested. But before the war its use for this purpose was so negligible, that it may be completely ignored in this discussion.

-Schneider Exh. 16, Book VIII-

14. (Testimony Elias tr. Germ.p. 1352-53, Engl. p. 1377-78)

14.

A considerable part of methanol production served for war purposes.

Insofar as this statement of the witness concerns the time before the war, it is incorrect with reference to section 13.

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15. (Testimony Elias tr. Germ. p. 1352-53, Engl.p.1377-78)

IG Farben produced methanol for the whole of Germany. For 1932 to 1939 the increase was 600 % and in 1943 2 000 %.

16. (Testimony tr.Germ.p. 1349-50, Engl.p. 1375)

Toluol, the most important ingredient of TNT, was in short supply. IG made methanol synthetically, and produced from this ^{synthetic}toluol.

17. (Pros. Exh. 616, Book 34, Germ. p. 129, Engl.p. 232, testimony ELIAS, tr. German p. 1350, Engl.p. 1375-76)

Powder and explosive production was linked up with synthetic methanol production in 3 respects: 2 of the most modern and effective explosives, hexogene and penta, require formaldehyde, which again was made from methanol used in

15.

The great increase in methanol production during 1932-39 was substantially due to the fact that this product was admixed to automobile fuel, while the rest, apart from paltry amounts, served for peaceful purposes in 1938/39. -Schneider-Exh. 16, Book VIII-

16.

Methanol was not used for toluol production until 1942.

-Testimony STRUSS, tr. Germ. p. 1856, Engl.p. 1871-72-

17.

As formaldehyde is one of the direct raw materials for the explosives hexogene and nitropenta, and as it, in its turn, is a methanol product, methanol is thus a secondary raw material for these explosives. Neither formaldehyde nor the explosives were manufactured within the sphere of Sparte I.

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substantial quantities in
toluol synthesis from TNT.
In the first half of 1944,
roughly 41 % of methanol went
into the explosive and prop-
elling charge industry.

-Prosecution Exh. 669, Book 31,
Germ.p. 22, Engl.p. 21.-
In addition, the DAG defense
documents prove that hexogene was
not produced at all before the war,
and nitropenta only in small
experimental quantities, so that
the use of methanol for these
purposes does not enter into the
question of preparation for war, or
for aggressive war.

Benzine and Oils

18. (Pros. Exh. 541, Book 27, 18.
Germ. p. 169, Engl. p. 154.
Pros. Exh. 542, Book 27, Germ.
p. 170, Engl. p. 157)

In the spring of 1933 IG
began the large-scale
production of synthetic
benzine in the Leuna works.

It does not correspond with the
facts when it is stated that the
production of synthetic benzine
in the Leuna works was carried
out on a large scale from 1933 up
to the outbreak of war. In 1933
production was yet in its initial
stage. Fuel production at Leuna,
and thus of the whole IG, was about
36% of the German synthetic
benzine production in 1938, about
18 % of the German motor fuel
production and 12.3 % of Germany's
fuel consumption.

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-Schneider Exh. 13 Book VIII-
-Buetefisch Exh. 19 and 20 Book I -

so that one can on no account talk
of large-scale development.

It must be remembered here that
Germany's motorization had
lagged very much behind that of
other countries and was greatly
stimulated by the Government,
so that the ^{presumable} ~~anticipated~~ peace
requirements were far from being
satisfied by synthetic benzine.

-Krauch Exh. 4. Book I-

19. (Testimony Elias tr.
Germ. p. 1332, Engl. p. 1354)
Pros. Exh. 612, Book 34)

On page 35 of the trial brief
of the Prosecution, the above
evidence is cited to prove
that synthetic benzine production
rose from 200 cubic tons
in 1935 to 22 000 cubic tons in
1939 and 118 000 cubic tons in
1943.

20. (Testimony Elias, Tr.
German p. 1328, Engl. p. 1351)

The large-scale production of
synthetic fuel could not be

19.

The statement in the trial brief
must be an error. Tr. p. 1332,
Engl. 1354, contains no reference
to Benzine, but to Buna, and the
quoted production figures in
Prosecution Exh. 612 likewise
refer to buna.

20.

Apart from the fact that the
statement of witness Elias

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justified by purely economic reasons, as investment costs for synthetic fuel and lubricant factories are 10 to 30 times those for the production of equal quantities of liquid fuel from natural petroleum.

concerning investment costs for synthetic fuel as compared with the production of equal quantities from natural petroleum are incorrect, the decisive ^{rentability} ~~solvency~~ factor is the cost of production as compared with the price of imported benzine in Germany. Leuna achieved a price for benzine of 13.5 pfennig per liter, while the price for imported benzine in 1926 was 19 pfennig plus 7 pfennig. duty. Although later on the import price dropped considerably, the duty was raised accordingly, due to the fact that there were other manufacturers, such as the benzol, mineral oil and tar industry, in existence besides Leuna.

-Tr. Germ. p. 8471-73, Engl. p. 8692-94, Buete-fisch Exh. 13, 14, 15, 16, Book I.-

21. (Testimony Elias Tr. Germ. p. 1339, Engl. p. 1362, Pros. Exh. 612 and 615, Book 34)

In 1937 the Farben output of synthetic benzine and lubricants represented 60 % of the total German production.

21.

In 1938 the IG benzine production amounted to 375 000 tons or 20 % of the German production of light fuels. IG lubricant oil production was 2 700 tons or 0.7% of the German production in 1937.

-Buete-fisch Exh. 13 and 22 Book I-

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22.

Pros. Exh. 525, Book 26, Germ. p.
151, Engl. p. 109
526, Book 26, Germ. p.
154, Engl. p. 111
527, Book 26, Germ. p.
160, Engl. p. 112

Production of synthetic benzine was encouraged by the Reich through concessions in the form of special tax reductions etc.

22.

Exhibits 525 and 526 are an application of the Economic Group Chemical Industry for a waiver of the export promotion levy, especially for products of mineral oil (Erdoel) and tar distillation and benzole.

Exh. 527 has nothing whatever to do with mineral oil (Mineraloel)

23.

(Pros. Exh. 523, Book 26, Germ.
p. 136, Engl. p. 94
524, Book 26, Germ.
p. 144, Engl. p. 101
525, Book 27, Germ.
p. 103, Engl. p. 114
536, Book 27, Germ. p.
110, Engl. p. 119)

In 1933 IG and the Luftwaffe entered into discussions regarding high grade aviation benzine for the latter.

23.

IG's prewar development of aviation benzine manufacture on the basis of these discussions was negligible. With regard to the insignificance of IG's prewar aviation benzine and lubricant oil production, detailed statements were made by BUETEFISCH in his direct examination.

-Tr. Germ. p. 8702, Engl. p. 8683-91, Buetefisch Exh. 21 and 22 Book I.-

Regarding the negotiations with the Luftwaffe in general, I refer

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to KRAUCH's testimony.

-Tr. Germ. p. 5064, Engl. p. 5043

24.

24. (Testimony Elias Germ.p. 1341, Engl. 1365, Pros. Exh. 523, Book 26)

Rejection of these processes
due to unprofitableness

cannot be a criterion for

the purpose of the Reich Aviation ^{Aviation} Reich Ministry ~~of the Interior~~
Ministry, if, with their assistance, was interested for armament

it is possible to produce particularly highgrade materials
for a limited field of
application.

This refers to the special
production of highgrade lubricant
oils and isooctane, in which the
already proved that before the war
these products were manufactured
in quite insignificant quantities.
Special lubricant oil 439 tons and
iso-octane 4 000 tons in 1938.

-Bueteifisch Exh. 19 and 22, Book I.-

These figures are striking proof
that Germany, as regards these
productions, which are described
by the Prosecution as being war-
essentials of special importance,
was in no way prepared for war or
aggressive war.

25.

25. (Testimony Elias, Germ. p. 1342, Engl. p. 1365)

There could be no doubt that
the products in question
(aviation benzine and special
lubricant oil) were designated
for military purposes.

The opinion of the witness ELIAS
is correct, but constitutes no
proof for the intention of
aggressive war, as these measures
could be enacted within the scope
of normal defensive armament.

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26. (Prosecution Exhibit 517, book 26
German p. 73, English p. 45)

On 11 October 1934 a meeting was held at the
Louna works between General Boekelberg, the
chief of the Army Ordnance Office, representing
the Wehrmacht, and representatives of the I.G. among
them the defendants Krauch, Schneider and Buoto-
fisch; at this meeting measures were being dis-
cussed regarding the L.-case (outbreak of war).

The defendant Schneider had
nothing to do with the
Braunkohlen-Benzin-Ges., for
the foundation of which these
discussions were to form
the basis. Later on/was
neither in the Vorstand nor
the Aufsichtsrat of this
company. During their direct
examination Krauch and Buoto-
fisch testified on this com-
pany and its relationship to
the I.G.

(Transcript German p. 5068 - 70, Engl. p. 5048-50)

Transcript German p. 8755 - 56, Engl. p. 8675-77)

Schneider attended this con-
ference on 11 October 1934
merely in his capacity as
technical director of Louna.

Toluol.

27. (Statement Elias, Transcript
German p. 1349-50, English p. 1375-76)

Toluol, the most important element of
TNT (Trinitrotoluol), was in scarce supply
and the I.G. produced Methanol synthetically
and from this product, the synthetic Toluol.
The production of Synthetic Toluol by way of
Methanol was an expensive process.

The Toluol-plant Maldenburgh was
erected as a Wifo (Economic Re-
search Company) plant only in
1942. The process does not ori-
ginate with the I.G. Thus this
product cannot be considered for
the preparation of an aggressive
war.

(Transcript German p. 1856, English p. 1872
Prosecution Exhibit 325, book 12,
Prosecution Exhibit 667 II, figure 7, book 31)

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Leadtetraethyl (Bleitetraethyl)

28. (Statement Elias, Transcript German p. 1343,
Transcript English p. 1366)

28. - 30.

The I.G. was the only producer of
Tetraleadethyl in Germany.

At first it must be established, that
the leadtetraethyl was not produced by
the I.G. but by the Ethyl G.m.b.H.,

29. Statement Elias Transcript

Germ. p. 1340-41, Engl.p. 1363-64) of which the I.G. through the Ammoniak-

The I.G. solved the problem of the pro- work Merseburg G.m.b.H. and the
duction of fuel for aircraft by using 2 Ethyl-lead-Corporation were 50 %
methods, as I mentioned before, namely shareholders. Therefore it is not
by producing not only Isooktan, but also correct that the I.G. was the sole
Tetraethyllead, adding it to the ordinary producer of this product.

benzine, which was produced from liquid Prosecution Exhibit 391, book 15,
fuel for purposes of increasing the octane Germ.p. III, Engl. p. 99
content.

The prosecution wants to prove, that
the leadtetraethyl was produced ex-
clusively for military purposes. To
refute this statement it is pointed
out, that leadtetraethyl mostly, as

30. (Prosecution Exhibit 715, book 37,
Germ. p. 157 Engl. p. 144, 524
book 26, Germ. p. 147
Engl. p. 108)

The ethyl-liquid is an indispensable
element of highgrade aircraft gasoline.

in all countries in the world thus
also in Germany, served peace-
time purposes and was used to
improve the ordinary gasoline
and the fuel for aircraft.

The addition of minute quantities of ethyl-
liquid to gasoline has such a favorable
effect, that no modern aircraft was operated
without this addition. In Germany there were
only 2 plants - for the production of leadte-
traethyl;

Statement Struss Transcript
German p. 1852, Engl. p. 1866

Statement Buotofisch Trans-
cript German p. 8765
Engl. p. 8686

Capel near Berlin, capacity
100 tons per month and Frose,
300 tons per month.

F a c t o r i e s .

31. (Prosecution Exh. 668/669/670/671, Book 31,
603/604/ Book 34,
752/754/ Book 41
112, Book 5, 683, Book 36)

In some cases the I.G. used their own
capital to establish new installations
or to expand those already in existence.

Another method of financing was that
the government supplied the money for the

erection of factories. This was parti-
cularly true when the plants of the
"Wifo" were built. As an example for
the most important plants in the building
program, the Prosecution listed in
their trial-brief the leadtetra-plants
in Capel and Frose, with reference
to the sphere of Sparte I.

The Prosecution however introduced also
various other exhibits, which deal
with the relationship of Sparte I to
the Wifo regarding the highly con-
centrated nitric acid.

The relationship of Sparte I to
the Wifo and the ~~emergency~~ ^{stand-by} plants
resulting therefrom, were dealt
with by SCHNEIDER in his direct

(Transcript German page 7411-14,
English p. 7347-51 -
SCHNEIDER Exhibit 19 and 20,
Book VIII)

The Wifo was established by the
authorities.

(Prosecution Exhibit 668, Book 31)

Already in 1935 the I.G. had
ceded its small share in the Wifo,
(Prosecution Exhibit 754, Book 41)

and was therefore since that date
no longer a shareholder of the

Wifo. The leadtetraethyl plant
in Capel, of which, as mentioned,
the I.G. owned only 50 %, was not

~~an emergency~~ ^{stand-by} plant, but served

peace-time purposes. The plant was
erected upon request of the authori-
ties.

(Transcript German p. 7411-14,
English p. 7349-51 - Transcr. G. p.
1852, Engl. p. 1866 - Transcr. G.
p. 8765, Engl. p. 8686 -
Prosecution Exh. 667 II, figure 3)

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The plant in Frose was only operated during the war and therefore has nothing to do with prewar planning. It was also erected upon request of the authorities.

(Transcript German p. 7414, English p. 7351
Prosecution Exh. 667 II figure 4
Book 31, German page 10, English p. 13)

The Hoko-installations, which the I.G. had to erect by order of the Military Economy Office (Wehrwirtschaftsamt) on behalf of the Wifo (Prosecution Exhibit 669, Book 31, German p. 19, English p. 19/20 668, Book 31, German p. 13, English p. 16) were typical ~~ammon-eney~~ ^{stand-by} plants, but they did not exceed the general armament program and did not show any indication of a preparation for an aggressive war. Also in England plants of the same type were erected with the help of the I.G. (SCHNEIDER Exhibit 21, Book VIII - Statement DIECKMANN Transcript German p. 2202, English p. 2210).

Before the war, only building contracts with the Wifo for 4 plants (Doeberitz, Piesteritz, Langelsheim and Embsen) were concluded.

The plant in Vienenburg, mentioned in Prosecution Exhibit 112, Book 5, was only a project and was never carried out.

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(Affidavit HARTMANN SCHNEIDER Exhibit 19,
Book VIII, page 2)

The nickel plant in Frose was ~~an emergency~~ ^{stand-by}
plant for the only nickel-installation of
the I.G. in Oppau. The extension was carried
out by order of the office for German raw
materials and raw products. (prosecution
Exhibit 636, Book 38). It was in connection
with the provision of a nickel stock due to
the low stocks in Germany. This subject
was dealt with by the defendant HAEFLIGER.
(Transcript German p. 9215-19, English p.
9119-23, HAEFLIGER Exhibit 17 and 27,
Book II (Prosecution Exhibit 696 and 697,
Book 32).

32. The I.G. regarded all new buildings, The Prosecution Exhibit 697,
erected since 1933 for the Wehrmacht German p. 96-98, English p. 95-
branches, either as constructions 101, shows, that until 1938 the
under contracts or the Four Year plants of Sparte I did not con-
Plan. The installations were erected clude any financing contracts with
by the I.G. under a contract by the Reich. Within the Four Year
order of the Reich, and were financ- Plan, the fuel plants of the I.G.,
ed by the authorities which re- were not expanded until the out-
quested them. break of the war. It has already
been proved that the increase in
the production of nitrogen and
methanol was necessitated merely
by political-economic reasons.

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The products of Sparte I which the Prosecution designates as being essentially war-important were dealt with in general by the defendant SCHNEIDER in his direct examination,

(German transcript pages 7464-10, English transcript 7340 = 7347
German transcript pages 7415 = 24, English transcript 7351 = 7360)

whilst in his direct examination the defendant BUEFISCH dealt with special problems concerning these products, such as research, investments, negotiations concerning agreements, exchange of experience and relations to the Wehrmacht.

German transcript, pages 8696-8770, English transcript 8617-8691.

By the Prosecution's complete disregard for the predominantly peaceful and national-economical importance of the large production of Sparte I and by the fact that it considers it exclusively from the military point of view, an entirely wrong impression is created and thus the final conclusions drawn are deliberately misleading.

It has been proved beyond doubt that in the years before the war, the development of production in Sparte I, especially in nitrogen and its conversion products methanol and oils, was dictated exclusively by ~~national~~ *of political economy* ~~economy~~ considerations, in which procurement of labor, the foreign exchange situation and certain endeavours for independence were the most important factors. It goes without saying that the Wehrmacht, from the point of view of general rearmament, was bound to have an interest in this development as well as in that of most industrial products. This explains the discussions on this development with offices of the Wehrmacht. In the case of nitrogen, methanol, oils and lead-tetraethyl, therefore, typical commercial war products are involved which had been almost completely absorbed in peacetime economy and which did not require a war for their development. The Prosecution stresses the production of nitrogen, methanol and

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Toluol with special reference to the production of explosives, and in the same way reference is also made in this connection to the statement of witness SCHINDLER, who states that at the beginning of the war, Germany's gun-powder capacity was about 5 000 tons per month and that of explosives about 5500 tons per month. He declares that it is not the intention to wage an aggressive war, which may be deduced from this fact, but just the contrary.

German transcript, page 12546, English transcript page 12341.

e) Stock-piling of war materials

Prosecution Trial Brief pages 44-46a.

The Prosecution alleges that the IG started as early as 1934 to lay in stocks of raw material, i.e. as part of the armament program for the "economic preparations" for war.

Allegation made by the Prosecution.

1. (Prosecution Exh. 747, Book 40, German transcript page 69, English transcript page 53)

In cooperation with the Reich War Minister, the Reich Air Minister and the Wifo (Wirtschaftsforschungs G.m.b.H.), the IG had built bomb-proof gasoline tanks as early as October 1935.

Defense.

- 1.

In connection with the tunnel referred to here project at Niedersachswerfen/the IG, or rather the Ammoniak-werk Merseburg G.m.b.H. had not the least connection with the stock-piling problem of gasoline. In SCHNEIDER Exh. 22, Book VIII it is made quite clear that Ammoniakwerk simply acted as building contractor since it had had experience in tunnel construction. The construction was controlled by the Reich Ministry for Economy, or rather the Wifo. The storage

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of products in the finished underground passages was exclusively the concern of the Wehrmacht. In addition, the IG maintained storage rooms for the storage of gasoline only for the current production requirements.

Statement SCHNEIDER, German transcript pages 7424-25, English transcript page 7361.

Statement SIGMANN, German transcript pages 2203-04, English transcript pages 2212-13

Affidavit BRUNEL, SCHNEIDER Exh. 22, Book VII page 62.

2. (Prosecution Exh. 731, Book 39
994, Book 43)

In 1936 the defendants bought from the Standard Oil 20 million Dollars' worth of gasoline in order to have stocks of gasoline for the Wehrmacht.

2.

SCHNEIDER neither had anything to do with this transaction nor did he have any knowledge of it. The Prosecution Exh. 994, Book 43, which dates back to 1944 and which - among others - is also addressed to SCHNEIDER, is no proof of his knowledge of this matter, which happened in 1936. Moreover, from Prosecution Exhibit 731, Book 39, it is apparent that this purchase of gasoline was effected for the German government.

3. (Prosecution Exh. 732, Book 39,
733, Book 39)

In July 1938 (at the time when GOERING held his aggressive speech in Karinhall and the defendant KRAUCH worked out for GOERING his Karinhall-plan)

3.

These transactions were effected via the Ethyl G.m.b.H. by its business manager Dr. Mueller-Cunradi. The defendant SCHNEIDER had no knowledge

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the defendants reached an agreement

with the Ethyl-Lead-Corporation so that they could

borrow 500 tons of tetraethyl lead, which whatsoever of this transaction.

was absolutely essential for the pro-

He is not referred to in any

duction of high grade gasoline for the Air Force. This transaction was carried out

of the many letters and memoranda of the Prosecution Exh.

because Germany - in case of war -

732, Book 39. Even though the

had not sufficient tetraethyl lead

Ammonickwerk Mersburg owned

for waging a war, and this was the

50 % of the holdings of the

reason why the German Reich pursued

Ethyl G.m.b.H., yet the defendant

a policy of stock-piling.

SCHNEIDER had no very

close business relations with

this company. The business

manager was Dr. Mueller-Cunradi.

The partnership of the Ammonick-

werk Mersburg G.m.b.H. was

governed by purely finance-

technical considerations of the

I.G.

German transcript, page 7427,
English, page 7362.

In his direct examination

BUETEFISCH stated: "About the

purchase of gasoline, tetra-

ethyl lead, nothing was report-

ed either to the Vorstand, the

Techn (Technical Committee) or

Sparte I.

German transcript, page 8790,
English page 8712.

4. (Prosecution Exh. 291, Book III,
756 Book 41)

Although these documents are not specially referred

in
to the Prosecution Trial Brief, they concern

the question of stock-piling, and especially
urea.

4. The defendant SCHNEIDER
gave a detailed opinion on this
matter when cross-examined.
Therefore we refer back to this.

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German transcript, pages 7425/26,
English, pages 7361-62.

The stock-piling to which Prosecution
Exh. 756, Book 41 refers took place
during the war and therefore has nothing
to do with alleged preparations for war.

f) The use of international agreements for weakening potential enemies
of Germany.

Prosecution Trial Brief, pages 47-53.

The Prosecution alleges that Germany used the cartel system as a means
of increasing its capacity to wage war and on the other hand for weakening
the defensive power of its potential enemies.

With regard to this subject the Prosecution accuses the I.G. of having
deliberately contributed towards weakening the defensive power of the
USA by withholding processes from American firms and refraining from ex-
changing experiences. As far as the relations of the I.G. to the Standard
Oil are concerned in matters of hydrogenation, this complex is dealt
with by the defendant BUETEFISCH. The defendant SCHNEIDER did not parti-
cipate directly in negotiations on this subject. As for the other sectors
included in Sparte I, only two points remain which require elaboration.

Allegation of the Prosecution.

- 1) (Prosecution Exh. 952, Book 42
~~German transcript page 93~~)

In a letter from the IG, Ludwigs-
hafen, the Chemnyco, New York is
requested not to inform Dupont of an
elucidation on the opinion

Defense.

1. From the sentence in this letter:
"We hope that there will shortly be
a clarification in accordance with
the attitude we have maintained
hitherto towards questions of this
kind"

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of the German government on international agreements concerning technical cooperation, since it was desired if possible to prevent foreign industry from gaining the impression that the IG was not free to enter into contracts in this respect.

the conclusion is rather to be drawn that despite its difficulties with the German government the IG was endeavouring to keep up its old spirit for negotiations. In my opinion it cannot on any account be read to imply that the IG intended to weaken the USA industry.

German transcript page 7428, English pages 7363-64.

2. (Prosecution Exh. 1018, volume 43)

2.

In 1933 - 1936 the IG refused to grant a license

for its nitrogen process to the Hercules Powder Company; it adopted the same attitude towards the Atlas Powder Co. after the outbreak of the war.

It is not apparent to what extent the IG could weaken the economy of the USA by this refusal. The American companies were in a position to make use of the American NEC process and were not dependent on the IG. In his cross-examination the defendant SCHNEIDER pointed out the fact that in 1936 the IG was prepared to make its nitrogen synthesis available to the English War Office for the erection of 3 nitro-plants. From this example it becomes quite evident that there was no tendency on the part of the IG to weaken the defensive power of potential

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enemies of Germany.

German transcript pages 7426-29, English
page 7364

Schneider Sch. 21, volume VIII.

The events under 1 and 2 - except for the matter with the Atlas Powder Company - were prior to SCHNEIDER's taking charge of Sparte I. These matters were not discussed in the Vorstand.

g) Propaganda, intelligence service, espionage.

Prosecution Trial Brief, pages 54 - 71

With regard to the accusations made by the Prosecution concerning alleged activity of the IG in propaganda, intelligence service and espionage matters during the period prior to the war, the Prosecution - as far as SCHNEIDER was concerned as manager of Sparte I - submitted Exhibits 922 and 923 in Book 49 containing communications from Vermittlungsstelle W to the Military Economy Office (Wehrwirtschaftsstab) dealing with English stand-by plants for primary nitrogen.

In Prosecution Exhibit 920, Book 49, German transcript page 109, English page 82, DICHLER declared on oath that he was asked for information on this matter by the Military Economy Office (Wehrwirtschaftsstab). SCHNEIDER had no knowledge of this matter of the Vermittlungsstelle W. Another document which may refer to the transmission of intelligence is Prosecution Exhibit 881, Book 46, by which the Prosecution apparently wishes to prove that SCHNEIDER had knowledge of some supposed espionage activity of the Chemnyco New York ~~dealing with~~ ^{in the} oils and nitrogen ^{field}. SCHNEIDER had nothing in particular to do with the Chemnyco. For this reason he had no intimate knowledge of its tasks except for the data given in the letter as shown by Prosecution Exhibit 881. From this however he could not deduce anything connected with the indictment.

German transcript, page 7433, English page 7368
" " " 7581, " " 7519

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Schneider's position as main counter-intelligence officer will be discussed later, since he only took this over during the war.

3. The ~~facts of the case~~ *state of mind.*

If the Prosecution submits that SCHNEIDER occupied positions within the I.G. and in public life which made some special knowledge available to him, then this submission is not correct.

SCHNEIDER's positions with the I.G. may be seen from

Prosecution Document Exhibit 317 and 318, Book 11/384, Book 15/512 and 377, Book 17/437, Book 20/919 and 146, Book 49/1328 and 1329, Book 68/1333, Book 69/490, Book 22 - Engl. Book 24.

These documents show that SCHNEIDER was a regular member of the Vorstand of the I.G. ^{regular} manager of the ammonium plant Merseburg G.m.b.H., permanent member of the Central Committee and the Technical Committee, main plant ^{leader} ~~manager~~ (Hauptbetriebsfuhrer) ^{only} from 1938, and plant ^{leader} ~~manager~~ (Betriebsfuhrer) of the Leuna plant from 1936. From 1937-38 he was a member of the former Working Committee. He often attended the meetings of the Working Committee and the Technical Committee before 1937 or 1938 as a guest in his capacity as deputy member of the Vorstand of the I.G. and deputy manager of the Ammonium Plant Merseburg G.m.b.H. The statement made in Prosecution Exh. 317, Book 11, that in 1938 Schneider took over the management of Sparte I independently, must be corrected in that he did not do so until 1939.

Insofar as Schneider has been indicted sub count I because of his activity in these positions, this has already been discussed in the above in all essential details.

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With regard to the responsibility and the significance of Schneider's position as member of the Central Committee, the Vorstand, the Labor Committee, the Technical Committees as well as that of manager of a Sparte, Mr. ter Meer made detailed statement in his examination, so that reference may be made thereto.

Transc. German pp. 6885/6894/6902/6910
English pp. 6760/ 6767/6774/6784

Furthermore, reference may also be made to the statements by Mr. von METZLER in his plea concerning the responsibility of the Vorstand. (See also Defense - Exhibits Nos. 280 and 281; KNIERIE documents 39 and 40).

The position as member of the Aufsichtsrat and Verwaltungsrat were limited to sales combines of the I.G. and to the collieries, and are in this connection without importance.

Schneider's official and semi-official position

did not make any information about the political and strategical aims of the government available to him.

His positions in the Central Organisation in Berlin of the Reich Group of the German Group Chemical Industry, Industry/and of the Reich Institute for Vocational Training were concerned with social affairs. His other positions were of a purely provincial character and in view of the centralisation ^{ed nature} of the National-Socialist Government did not offer him any information concerning high politics.

Transc. German pp. 7438-39, English p. 7373 -

The appointment to Wehrwirtschaftsfuehrer (leader of the Military Economy Liaison Office) was purely nominal.

- Statement SCHNEIDER, Transc. German p. 7438, Engl. p. 7374 -
- Statement MILLIANT, Transc. German p. 2307, Engl. p. 2314
- SCHNEIDER Exhs. 31 and 32, Book VIII -

Furthermore various leading gentlemen from Leuna have made statements concerning the production of Leuna which in practice means that of Sparte I.

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E.g. Statement by GIESSEN, Transc. G. p. 7592, E. p. 7529
Statement by KADING, " G. p. 7647, E. p. 7580
- Affidavit by HANISCH, SCHNEIDER-Exh. 51, Book X, p. 21 -

Schneider's negative attitude towards the war is for instance testified by the witnesses.

-GIESSEN Transc. G. p. 7592, E. p. 7528
Affidavit by SAUER, SCHNEIDER - Exh. 4, Book VIII -

In this connection it is somewhat strange that the Prosecution in its indictment as well as in the Opening Speech and in its trial brief again and again mentions an alleged - and from every sensible person's point of view unimportant - statement supposedly made by Schneider at a meeting of the main departmental chiefs of the Leuna plant towards the end of August 1939, namely the words: "This is the war". (Pros. Exh. 261, Book 9)

In his direct examination, Schneider has stated that he cannot remember having used this or any similar expression.

Transc. G. p. 7437-38, E. p. 7371/73

Other leading personalities from Leuna cannot remember such a statement by Schneider, either.

Schneider-Exhs. 4 and 30, Book VIII -
Statement by GIESSEN, Transc. G. p. 7593, E. p. 7529/30

Bustefisch, in whose affidavit (Pros. Exh. 261, Book 9) this statement may be found, corrected his statement in his direct examination.

Transc. G. p. 8792, E. p. 8714.

In this connection reference is also made to Prosecution Exh. 29, Book 3, representing the transcript of the interrogation from which Pros. Exh. 261 was formed. In it BUSTEFISCH used the expression "Now it is war". Both statements are self-evident conclusions reached by everyone as a result of the then general situation.

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With Pros. Exh. 258, Book 10, the Prosecution introduced an affidavit from RUTHER stating that in the opinion of the affiant and in the general opinion of the intelligent section of the Leuna employees, the National Socialist system would under all circumstances mean war.

In a second affidavit by the same affiant

Pros. Exh. 261, Book 9,

he states that this opinion did not refer to the starting of an aggressive war by Germany, but rather that the arrogant attitude of National Socialism would cause the foreign powers to take military action against Germany.

RUTHER's statement in Pros. Exh. 258, no. 5, that in 1932 the dismissal of the Leuna staff was carried out in order to drive the unemployed men into the arms of the party, and that new staff was not engaged until 1933, is ~~contradicted~~ ^{refuted} by Schneider-Exh. 12, Book VIII according to which new staff was already engaged in 1932. The previous dismissals made necessary during the general economic crisis were obviously carried out only for economic reasons.

Military and political conjectures and measures were even in the case of influential personalities no conclusive proof at all of a knowledge in the sense of Count I, as is shown by the acquittal of the Minister Funk of Economy/under this count by the I.M.T. The Occupying Power, too, recognize this fact: a large number of high officials and officers who played a leading part in rearmament, as well as many witnesses in this trial, are free again although they were much better informed about these things than e.g. Dr. Schneider.

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It must also be pointed out that before the beginning of the war no one - apart from his informed collaborators - could talk to Hitler about the coming of aggressive war, a fact obvious to everyone acquainted with the circumstances, and which was also confirmed last autumn by the witness SCHMIDT.

German 1575
-Transcript/page ~~1516~~, English page 1594.-

Hitler contested the possibility of war even towards his most intimate collaborators as late as the summer of 1939.

-Statement by MILCH, German transcript page 5356, English page 5329/30.-

The German chemical industry, however, had no reason whatever to raise questions in this respect, since its production - as has been proved - was in an economic sense bound up with peacetime conditions. This was confirmed after the First World War even by the Allied Powers.

-Statement by MORGAN, German transcript page 705 et seqq., English page 740 et seqq.-

Regarding the statements on page 104 et seqq. of the Trial Brief concerning the importance of order and coercion, reference is made to later explanations sub part I B and part III A 4b of this Closing Brief. The summing-up of the alleged point of view of the defendants on page 104 of the Trial Brief does not correspond with the facts at all. The evidence has clearly proved that the I.G. did not help Hitler to power, or afford him any great assistance. The economic developments of the I.G. and its participation in rearmament corresponded to that of the whole German economy. The defendants could not draw from this fact any special conclusions concerning an aggressive war. As far as legal regulations existed, these had to be obeyed by them, as has always been recognized before these Tribunals.

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Thus, SCHNEIDER, too, did not know the plans of the government, nor had he any access to confidential documents of the authorities as has been submitted by the Prosecution, e.g. in Book 19.

H. Waging of aggressive war.

During the war, the whole production of the industry as well as almost all spheres of activity were regulated by official regulations and orders. Fulfilment was guaranteed by severe penalties. In this respect, special reference is made to the statements in the following part III A 4b and the documents specially mentioned there, beginning with SCHNEIDER Exhibit 201 in Volume VI, and Exhs. 228 and 229 in Volume VII; and concerning Leuna, reference is made to Affidavit HANISCH, SCHNEIDER Exhibit 51, Book X, page 21.

It has also been recognized by these tribunals that in war the Germans had to obey the laws and orders of their government; and by doing so, they did not commit a crime.

-Verdict Case 3, German page 96, English page 10705-10706-

This applies also to SCHNEIDER's position as main counter-intelligence officer of the I.G. which he took over reluctantly in 1940.

-SCHNEIDER Exhibits 23 and 24, Book VIII.-

The functions involved have been discussed by him in detail during his direct examination.

German

-Transcript/pages 7429-36, English pages 7365-7371-

From this it may be seen that the cooperation of the I.G., as well as that of other large firms in Germany, with the Counter-Intelligence Department of the OKW, was conditioned by the war. The Counter-Intelligence Department of the OKW, through Admiral CANARIS, requested the cooperation of the I.G. concerning various questions of counter-intelligence as has been described by SCHNEIDER in his direct examination.

-Transcript page 7430-31, English transcript page 7365-7367-

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The fact that this cooperation was very lax and did not satisfy the Counter-Intelligence Department of the OKW, is proved by FOCKE's statements, and also by the fact that even in 1944 FOCKE thought it necessary to give a lecture before the I.G. Vorstand, in which he stressed the need of closer cooperation.

-Prosecution Exh. 925, Book 49, German pages 137-38, English page 98
SCHNEIDER Exh. 25, Book VIII.-

SCHNEIDER's activity as main counter-intelligence officer was more authoritative in character, i.e. he was to intervene in cases of possible disagreements between the Counter-Intelligence Department of the OKW and the experts of the I.G. With the exception of three basic discussions with the Counter Intelligence Department of the OKW, he did not directly deal with the tasks of counter-intelligence but left this work to his deputies in office A.

-SCHNEIDER Exh. 23, Book VIII, pages 71-72.

As far as commercial questions were concerned, Mr. von SCHNITZLER, resp. the Commercial Committee, were in charge of ~~operations~~ *the actual management* in regard to foreign questions of counter-intelligence.

Pros. Exh. 941, Book 49, German page 189, English page 144.

The connections which the Prosecution, during SCHNEIDER's cross-examination, was trying to establish between his position as main counter-intelligence officer and the Main Office for the Security of the Reich, resp. the Gestapo, will be dealt with under point IV.

In conclusion it should also be mentioned that in war, it is not only a passive counter intelligence which does not violate international law; an active information service does not violate it either, and this is also valid according to American legal opinion.

-SCHNEIDER Exhs. 26 and 27, Book VIII.-

SCHNEIDER's guiding principle was "to act according to duty", without this constituting any incentive to a criminal action. He only did his duty towards

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his country. Any refusal to do so would have lead to the most serious consequences under the existing laws.

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Utilization
II. ~~Mobilization~~ of the Economy of Occupied Areas.

Regarding this count Dr. SCHNEIDER made the following statement in his direct examination:

Leading to acquisitions
"I personally had nothing whatever to do with any of the events, which the Prosecution brings up against I.G. in count II. True, I knew of the events insofar as they were brought up in the Vorstand meetings. All cases concerning count II were either carefully prepared by expert boards or responsible Vorstand members, and I knew that contracts and agreements ~~preceding purchase~~ or participations, were most carefully scrutinized from the technical, the commercial and the legal angle. I had to have complete assurance and confidence that all cases were handled correctly and conscientiously, so that I as non-expert had nothing to do but acknowledge the matter."

Transcript German page 7440/41, English page 7376.
This attitude is entirely justified from his point of view. In his sphere of work he had nothing to do with those events abroad, and was therefore, also in view of the extent and scope of his own tasks, unable to concern himself with these matters. The decentralized working methods of I.G., which are justified in view of the size of the enterprise, are for instance shown in affidavit Jakobi, Defense Exh. 171, Book V and affidavit Pister, Oster Exh. 19, Book II.

How little SCHNEIDER realized about the relationships abroad, is manifest from the correspondence of fall 1942, in which he asks SCHNITZLER, in which French firms the I.G. is interested and is informed by him of the 51 1/2 participation in Francolor.

-Prosecution Exh. 1327, Book 68-

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During the HUMSCHEIDT cross examination on 11 May 1948, Prosecution Document NI No. 14680, identification number 2354, dealing with the dismantling of factory ~~in~~ Sluiskil, was submitted. The Prosecution submits that several I.G. factories, including for instance Heydebreck which belongs to Sparte I, also received a certain quantity of machines from Sluiskil. The testimony of witness HUMSCHEIDT established that Reich agencies were the initiators of these measures.

German
-Transcript/page 14711, English page 14431-

SCHNEIDER of course had no knowledge of these individual events within Sparte I.

In view of the technically, legally, financially and in all other aspects so extensive and necessarily complicated relationships of I.G., it was impossible for the individuals to judge even the more important events and problems, even if they were as highly qualified as the defendants. Consequently, it is out of the question to hold SCHNEIDER criminally responsible in connection with these events. According to the law of all civilized nations and the jurisdiction of these courts, this would require an individual knowledge of the respective events, such as SCHNEIDER did not and could not have concerning the said events abroad.

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III. Compulsory Labor.

III. Trial Brief of the Prosecution Part III, I and II A

A. General legal problems of conscript labor and compulsory labor.

In the presentation of evidence within the Defense assignment as a whole, the undersigned undertook to deal with problems relating to foreigners' compulsory labor. The same applies to this final brief, which consequently discusses particularly these problems in detail.

As far as this matter is concerned the Prosecution ~~levels the~~ charges ^{of having committed} that the individual industrialist, by ~~compulsory~~ ^{forced} employment of labor, ~~had committed~~ a criminal offense according to Control Council Law No. 10 and the IMT verdict. It cites particularly the Hague Land Warfare order of 1907, the provisions of which are reproduced on the first pages of its Trial Brief.

This international agreement was reached at a time, when even in Europe all problems were politically, intellectually and economically in general still viewed from a liberal angle, and when modern war with its technical and other effects were still unknown. Compulsory labor was unheard of in those days, and not only in the US but also in Europe. Since then the world has experienced two great wars with hitherto undreamed-of consequences, which naturally did not remain without the greatest effect on the laws of the affected nations, and thus also on international law. It is therefore necessary to give a short survey of the historical development since the first world war, in order to understand the problems concerned.

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1. Historical Development since the First World War.

In 1914-1918 Europe had its first great war, waged primarily not only with military, but also with technical and economic means which - not alone in Germany - gave rise to the concept of "total war". Compelling economic necessities and the advance of state-socialist ideas led various states to introduce labor conscription for their nationals in those days, thus e.g. Germany, by the Auxiliary Service Act of 5 December 1916.

-Schneider Exh. 82, Book I-

Beyond that, the German Reich brought a large number of Belgians to work in Germany, which led to a protest by the US.

-Trial Brief of the Prosecution III, German page 3, English page 3.

The German government explained these measures by article 43 of the Hague Land Warfare Order, stating that the unemployment in Belgium, caused by the blockade, necessitated placement of the Belgian unemployed in the interest of public order. In view of this the US confirmed a special settlement regarding these measures, without repeating its protest.

-Schneider Exh. 103 C, Book II-

After the war, even Allied experts on international law recognized the justification of the German point of view. Thus, the British specialist on international law, M. de Watteville, says in the Grotius Society VII (1922) page 147:

"If the plea of economic necessity is combined with the unwritten right of a commander-in-chief in the field to clear any district of its inhabitants (see Holland, The Laws of War on Land page 16), it must be

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conceded that there exists considerable justification for the steps taken by the German command to move large numbers of Belgian and, still more so, French subjects from the area of operations."

-quoted from Final Plea KRANZBUHLER in Case 5, page 5-

The German Supreme Court stopped proceedings on account of war crimes against the primarily responsible General Field Marshall von Hindenburg in 1925 because, according to articles 43-52 of the Hague Land Warfare Order, the deportations for work were permitted by and not contrary to international law. A short time afterwards, von Hindenburg became president of the German Reich, and there were no protests from the foreign powers because of past events.

Yet, the British jurist Claud Mullins makes the following statement regarding the jurisdiction of the German Supreme Court in the war crimes trials after the First World War:

"The War Crimes Trials were demanded more by excited public opinion than by the statesmen and the fighting troops. If public opinion of 1919 had been allowed to take its course, these trials would have made a bad show, of which later generations would have been ashamed. But thanks to the statesmen and jurists, the public cry for revenge was transformed into a true demonstration of the majesty of right and the power of the law."

- Quoted from Final Plea Kranzbuehler in the IMT Trial.
German page 104-105, English page 13636 IMT transcript of 16 July 1946.

In addition to this the events in Belgium during the First World War were investigated by a special commission of the German Reichstag under the presidency of the well-known German pacifist, democrat and expert on international law Prof. SCHUECKING, who was also a member of the International Court of Justice in the Hague. This commission reached the conclusion that in view of the military necessities and under the above conditions the said steps of the German government were internationally justified according to article 43 of the Hague Land Warfare Order. Under II of its resolution, the commission

refers to the blockade of Germany at that time, which was in vital points irreconcilable with the then prevailing view on international law, as held by many states including the US.

-Schneider Exh. 103 A, Book II, page 19 etc.-

-See also Charles Cheney Hyde: International Law, Second Edition, page 2177 etc.-

In his written opinion, attached to the resolution of the Reichstag Commission, Geheimrat KRIEGER^{6E} makes the following statement concerning the problems concerned:

"This right vested in the commander according to article 43 doubtlessly includes the right to combat unemployment, if it takes forms endangering public order and safety. In such a case, compulsory assignment of unemployed persons to work is permissible if there are no other ways to check unemployment effectually, even if the laws of the country have no provisions for such situations or even if it means a violation of these laws. Finally, on the basis of article 43, the commander has the right to use unemployed persons even outside of their home town, even outside of the occupied territory, i.e. for instance, in the territory of the occupying power, if no sufficient work can be provided for them in their home town or in the occupied area. There is no indication in the text of article 43 that these measures are restricted to the occupied area; the only prerequisite for their permissibility is that they are issued in the interest of the occupied territory and are objectively suited to serve such interests.

Another question is, however, whether the right of the occupying power resulting from article 43 was not supposed to be restricted through the following regulations of the Rules of Land Warfare which are destined to safeguard the rights of the population in the occupied area; this refers especially to article 46, guaranteeing to the population the so-called basic rights - ~~family honor~~^{family} rights, the lives of persons, and private property, as well as religious convictions and practice - as well as article 52, regulating the right to demand requisitions in the occupied area and restricting them to the needs of the army of occupation. With regard to the situation it seems out of the question that in ^{any} given case these or other rights of the population could prevent the occupying power from restoring or ensuring public order and safety in the occupied area. The protection of such public interests is of such decisive importance for the occupying power for reasons of military security as well as for reasons of the general welfare in the occupied area, that the otherwise protected private interests of the population will

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that have to take second place. For this reason article 43 must have precedence over the following articles at any time *and in the sense* the latter ~~that~~ not contain exceptions of the rules contained in said article. This purpose of the Rules for Land Warfare also results from the fact that article 43 expressly allocates the right to the occupying power to disregard the laws in force in the country, also those concerning the protection of persons and property, if such is necessary in the interest of restoring and ensuring public order and safety. This interpretation of article 43 is finally confirmed if one studies the history of articles 46 and 52, which clearly proves that military necessities are to have precedence over the rights of the population listed there; there can be no doubt, that restoring and ensuring public order and safety in an occupied territory is a military necessity.

-Schneider Exh. 103 B, Book II, page 32-33-

After the first World War Europe did not return to the old liberal views even when evaluating the compulsory labor problem. In 1926 the majority of European and non-European countries made a pact with regard to slavery, wherein the following definition of slavery is given in article 1, number 1:

"Slavery is the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised."

-Schneider Exh. 83, Book I, page 3-

Article 5, on the other hand, in principle permits compulsory labor:

"The High Contracting Parties recognize that recourse to compulsory or forced labor may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labor from developing into conditions analogous to slavery.

It is agreed that:

1. Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labor may only be exacted for public purposes,
2. In territories in which compulsory or forced labor for other than public purposes still survives, the High Contracting Parties shall endeavor progressively and as

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soon as possible to put an end to the practice. So long as such forced or compulsory labor exists, this labor shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the laborers from their usual place of residence.

3. In all cases, the responsibility for any recourse to compulsory or forced labor shall rest with the competent central authorities of the territory concerned."

(underlining here)

SCHNEIDER Exh. 83, Book I, page 3 - 4.

In the English version of the pact, "Zwangsarbeit" is translated as "compulsory" or "forced labor", whereby the difference from "slave labor" is already given recognition in the legal phrasing.

The US signed this pact with the exception of article 5, section 1, which characterizes the difference in legal development between Europe and the US.

SCHNEIDER Exh. 232, Supplementary Book II.

That labor conscription in wartime is recognized as being for public purposes, is shown by the subsequent developments. Thus even neutral Sweden, with her pronouncedly constitutional way of thinking, introduced labor conscription in the event of war by legislation of 30 December 1939.

Schneider Exh. 88 Book I.

On the strength of the Four Year Plan, Germany had already before the war introduced extensive labor conscription within Reich territory by decree of 15 October 1938 and 13 February 1939, which was in principle also applicable to foreigners.

SCHNEIDER Exh. 84, par. 1, section 1-4, Book I
SCHNEIDER Exh. 85, Book I.

Although this labor conscription for foreigners within its national boundaries was at the time felt to be a hardship, Sweden again adopted this fundamental regulation according to chapter 8, par. 17 of the above mentioned document, Exh. 88 in Book I. France likewise had already introduced partial labor conscription for foreigners in its sphere of sovereignty before the second world war and prior to the German occupation.

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-Schneider Exh. 86, Book I, under II -

The same applies to Russia for the period prior to her entry into the second world war.

-Schneider Exh. 87, Book I -

There it reads as follows; this is very important for the problems dealt with in the following:

"By decree of 19 October 1940 (AOS. No. 42, of 26 October 1940) the compulsory transfer of engineers, technical foremen, employees, and skilled workers from one plant or government office to other plants and government offices was ordered. The right of compulsory transfer of the workers to any place whatever was granted to the People's Commissars of the USSR.

By ordinance of 25 October 1940 (AOS. 1940, No. 30, Art. 730) female labor was admitted to underground work in mining. These decrees in the field of labor law were supplemented by corresponding directives in the agricultural sphere. These intensified rulings of the labor law were also applied to parts of Poland, Rumania, and the Baltic States after their occupation in 1939/40."

-Schneider-Exh. 87, Book I, p. 23 -

2. Forced labor and labor conscription in the second world war.

Regarding the measures taken by the Germans during this war, it must be noted that the International Military Tribunal branded the entire forced labor program with all its accompanying circumstances as war crimes and crimes against humanity and especially blamed the defendant SAUCKEL for all the terrible events in which he was involved through the conscription of labor and the removal of the workers; in doing so, it did not consider in detail the problems, which evolved from the introduction of labor conscription. Furthermore, the Tribunal did not deal in detail with the legal and factual aspect of the employment of forced labor in German industry and in agriculture on Reich territory, but only pointed out the various irregularities. The question of whether and in how far the individual German, who was in any way connected with

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this program, rendered himself liable to punishment according to the prevailing circumstances, remained undecided. As members of the military and administrative machine in the various countries under the most widely varying circumstances, thousands of Germans were involved in the implementation of this program and millions of German industrialists, workmen and farmers employed foreign forced labor of all nationalities. The larger majority of them - partly in responsible positions and with the consent of the military government - are again employed in their former professions, especially those from industrial circles. Actually, the irregularities dealt with by the IMT could mostly be traced back to measures instituted by individual German agencies in the occupied territories, and instances of negligence on their part of which the German population had no knowledge, or had only heard in the form of rumors, since they had no access to any official documents.

-Pros. Exhibits 1288, 1302, 1304, 1305, 1306, 1307, 1308, Book 67-
-Testimony Stothfang Tr. Germ. p. 3752, Engl. p. 3728-

Going by the results of the Nurnberg trials, and also of denazification, there can be no doubt that in view of the circumstances and the German regulations the treatment of foreign workers in German industry and agriculture was generally worthy of human beings in every respect.

-compare e.g. Pros. Exh. 1303, Book 67- Germ. p. 141, Engl. p. 83-
and with reference to the Flick-Konzern:

-Judgment Case 5, Tr. Germ. p. 10732-33, Engl. p. 10990-

Irregularities were exceptions or the result of heavy air-raids which affected the German population in the same way, sometimes even more severely; I will refer to this in detail later.

The actual and legal circumstances under which the foreigners had come to Germany could not be clearly judged and recognized by the individual Betriebsfuehrer due to the extensively applied

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rule of secrecy, which fact was also confirmed by Stothfang.

-Transcript German p. 3752, English p. 3728 -

The variety of forms and the problems of this program are to be explained in the following.

a) German measures in the various countries and their legal justification.

With reference to the individual countries, from which, during the last war, forced laborers were transported to Germany, the following may be noted with regard to the most important and most representative among them:

In 1939

/P o l a n d was completely occupied by the German and Russian forces and its army was destroyed. The German government was therefore of the opinion that its (Poland's) sovereignty on the basis of the doctrine of debellatio or subjugatio had been lost, and that Germany was therefore entitled to

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regulate Polish affairs, regardless of the Hague Convention of Land Warfare. In view of this, the German Government issued the decree concerning national labor services dated 26 November 1939 (Pros. Exh. 1298, Book 67)

The present occupying powers of Germany, as is well known, also adhered to this theory in a modified form, when they introduced the labor service regulations here. -

-compare Schneider documents Ident.No. 110, 111, 112, 113, Book II-
In this connection the official IMT-text (official edition) Engl. p. 83, Germ. p. 16500 - refers to the fact that this doctrine could not be applied if an army was still engaged in military operations and tried to reconquer the occupied territories. The fact that later on, a Polish army was formed of Poles who lived abroad and had left their fatherland, only became known to the German population in general towards the end of the war after the ^{this was} invasion; due to military circumstances and the ban on news.

Thus, thousands of German officers and officials were involved in the administration of Poland within the framework of a German program, who, as far as they did not commit any atrocities in the course of their duties, were never prosecuted. All these officials and officers were far more closely connected with the German measures instituted in Poland than the German plant leaders.

In Czechoslovakia the labor ^{conscription} / regulations were introduced by the government of the Protectorate.

-Testimony Stothfang tr. Germ. p. 3761, Engl. p. 3737-38-

The ordinance issued by the government of the Protectorate dated 4 May 1942 and dealing with measures regarding the direction of labor (paragraph 1 and following, conscription) contained in the collection of laws inter alia of the protectorate Bohemia and Moravia 1942, p. 821.

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(Compare also Exhibit 592, Book V, Case 10, pertaining to argumentation IHN, which contains this decree.)

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had nothing to do with the general labor conscription. Moreover, the justification for these measures given by the German government, such as any possible influence exerted by the German government on the government of the Protectorate, in the subsequent introduction of labor conscription, was ^{that} on the basis of the agreement of 15 March 1939, the Protectorate belonged to the territory of the Greater German Reich. Furthermore from the factual and legal point of view, reference is made to the documents which were also submitted with Schneider-Exh. 89b) - f) and contain, in particular, a ruling of the German Reich Court in 1940, and an essay composed in 1947 by Prof. Dr. MERKL of the Tuebingen university. Mention should also be made of the fact that before the second world war, various countries, among them Gt. Britain, appointed a consul in Prague, this being the capital of the Protectorate, and thus de facto acknowledged the ruling made in 1939.

Parliamentary Debates House of Commons Official Report of 19 June 1939, p. 1782.

"The step taken implies de facto recognition of the present position in Bohemia and Moravia."

-Quoted from the Final Plea Kransbuehler, Case 5, p. 36-

In France labor conscription was introduced by ordinances of the French government. The allocation of French workers for Germany was effected on the basis of contracts between the French and German governments.

-Schneider Exh. 92, Book I

"	"	93	"	I
"	"	95	"	I
"	"	96	"	I

The Vichy government on the basis of its establishment was the official French government and was recognized by the majority of those states which had sent their representatives to this government - thus also the USA up to 1942.

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-Schneider Exh. 98, Book I -

Affidavit BOSE, von Schnitzler-Exh. 98, Book V-

The law was also in conformity with requests made by French circles to register those people who were not working.

-Schneider Exh. 93, Book I -

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Inasfar as any pressure was exerted on the French government by Germany, it was insignificant under International Law. At least nobody in Germany could have referred to it, particularly in view of the prevalent theory on International Law.

Book VII

-Schneider-Exh. 97, Book I / 221 -/Art. 499-

With many other countries, namely Italy, Bulgaria, Denmark, Slovakia, Spain and Hungary, official agreements concerning the allocation of labor had been concluded.

-Schneider Exh. 91, Book I / 99, Book II-

According to these documents they were obviously voluntary workers.

Inasfar as the relevant states allegedly used compulsion and conscription of labor, this was beyond the judgment of the German economy and furthermore without importance to the latter for the above-mentioned reasons.

The German public had to regard the so-called Italian military internees ^{disarmed} as members of the then hostile Royal Italian Army. Accordingly they were treated like French prisoners of war in the economy. Later they even became free workers.

-Statement Wurster tr. page 11260 (German) page 11055 (English)-

Moreover, they were assigned to the German government as workers by MUSSOLINI's government on the basis of official agreements.

-Statement Milch tr. p. 5365 (German), p. 5332 (English)-

Finally it is generally known - thus also in legal circles - that the partisan war played an extremely large part in Italy and therefore the evacuation of the able-bodied male population eligible for military service appeared justified on the basis of article 43 of the Hague Land Warfare Regulations. In the judgment in case 7, tr. German p. 21, English p. 10439-40

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it was established that the partisan war in this war also constituted a violation of International Law.

As far as the so-called Eastern workers were concerned, the German government held the opinion that the Soviet government had repudiated the Hague Land Warfare Regulations.

-Schneider-Exh. 106, Book II-

If the IMT points out in connection with the regulations mentioned under VIII - off. text English page 83 (official edition), Germ. p. 16500 - that the Hague Land Warfare Regulations still represent general International Law, then this can be applied in individual cases only insofar as the partners consider themselves bound by the relevant principles in accordance with the general principle of reciprocity under International Law. Reference is made to Schneider-Exh. 87, end of Book I, - partly quoted above - and to Schneider-Exh. 108, Book II and also to generally known facts in connection with the introduction of most extensive labor conscription on behalf of the Soviet Union in Poland, Bessarabia, the Baltic States and Germany following their partial occupation.

The well-known liberal German experts in International Law, LISZT and FLEISCHMANN, furthermore state in the 9th edition of their Manual on International Law, page 15, in accordance with the prevalent theory, that the International Law in force had developed on the basis of Christian views shared by the European-American civilized people; for this reason the authors queried China's eligibility to belong to the nations adhering to International Law at the time. There is no doubt about it that the Soviet Union no longer identifies herself with these views, but maintains different opinions with corresponding results.

-Compare also in this connection Schneider-Exh. 132, Book III, page 84 and following -

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Furthermore, the German government, as the occupation power, ^{particularly for the Soviet Union,} largely justified its regulations concerning labor conscription, ~~particularly for the Soviet Union,~~ and the allocation in Germany according to Article 43 of the Hague Land Warfare Regulations, ^{by pointing out} ~~in view of~~ the well-known partisan danger in Russia and the unemployment resulting from the almost total dismantling of the Russian industry through the Russians.

-Pros. Exh. 1308, Book 67, Germ. p. 237, Engl. p. 121-

-Aff. FAULHABER, Schneider-Exh. 104, figure 2 and 5-

-Statement SCHLOTTERER, tr. Germ. p. 4667, Engl. p. 4650-

-Schneider-Exh. 103, Book II-

Pros. Exh. 1306, Book 67, Germ. p. 193^x)-

Finally the subsequent military necessity and the retreat of the German forces was significant for the evacuation of the able-bodied population.

-Pros. Exh. 1308, Book 67, Germ. p. 223, Engl. p. 114-

It is common knowledge that during both world wars Great Britain also removed able-bodied German civilians from neutral ships and interned them.

The same also applies to Western and Southeastern Europe due to the partisan wars, the unemployment resulting from the blockade and the German retreat.

-Pros. Exh. 1308, Book 67, Germ. p. 235, Engl. p. 120 ff.

-Schneider-Exh. 42, Book IX, figure 2-

-Judgment Case 7, Germ. p. 21, Engl. tr. p. 10439-40-

and legally

-Schneider-Exh. 103, Book II-

During the war the nature of all these aspects - which formed the basis for the actions of the German government and which it asserted under the most diverse circumstances - probably rendered any discussion between a civilian and the government regarding the admissibility of foreign forced labor impossible in any country and certainly in

National-Socialist Germany.

x) It has been ascertained meanwhile that no translation of this order by the German occupation authorities is contained in the Engl. Doc. Book.

A civilian would moreover not have had any knowledge of actual conditions on which to base possible protests, e.g. concerning the origin of the partisan wars.

b) Basic legal questions

As already mentioned, the Hague Land Warfare Regulations were established before the 1st world war under entirely different political and economic conditions. Hunger-blockade, air and submarine warfare were unknown in their severe effects on the civilian population and production capacity of a country. A blockade in the sense of the first and second world war was considered inadmissible under International Law by the majority.

-International Law, by Cheney HYDE, 2nd edition, page 2177-

The modern air warfare with its
~~With the terrible effects of modern air warfare on women and children,~~

it was inconsistent with the wording and meaning of article 25 of the Hague Land Warfare Regulations, although now a different conception is extensively gaining ground. The same applied to the submarine warfare, when all powers disregarded the naval agreement of 1936 during the 2nd world war.

Limits:

"In view of this evidence and specially in connection with an order from the British Admiralty of 8 May 1940 to the effect that all ships in the Skagerrak were to be sunk on sight, and in view of Admiral ~~Doenitz's~~ entry in the questionnaire to the effect that from the first day the United States entered the war, unlimited submarine warfare was conducted by that nation in the Pacific, the penalty imposed upon DOENITZ is not based on his violations of international regulations governing submarine warfare."

-IMT official edition, Engl. page 140, Germ. p. 16587-

The great importance of the technical and industrial production for warfare and for the cruel means of combat created the so-called economic war and brought decisive changes in the principles of International Law. A battle of military forces has changed into a battle of nations.

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- 1) "The established laws of war make a distinction between combatants and non-combatants. The distinction still holds in principle, but some modification of it must be admitted in consequence of the totalitarian character of modern warfare. Factory workers engaged in the production of munitions or of industrial equipment essential to the prosecution of the war must now be regarded as engaged in "war work". Report on the International Juridical Status of Individuals as "War Criminals". Prepared by the Inter-American Juridical Committee Washington 1945. p. 7

- 2) "The Hague Conventions, drawn up in 1899 and 1907, were based upon ideas prevailing during the previous half century Ideas have developed substantially since that time." Report on the International Juridical Status of Individuals as "War Criminals". Prepared by the Inter-American Juridical Committee, Washington 1945.

*quoted from the Final Plea Kransbuchler, Case 5, page 15, note 1 and page 19, note 2

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The problems of economic warfare were controversial already after the 1st world war.

"I.M. Spaight, Aircraft and Commerce in War, London 1926, p. 11:

"It is to try to stem the tide of destiny to resist the development of economic war."

p. 19:

"Economic war insufficiently recognized in the existing rules.... It is necessary that the existence of a substantive economic war co-equal in importance with the war of military encounter should be recognized."

"J.L. KUNZ, Kriegerecht und Neutralitaetsrecht, Vienna 1935, states with reference to economic war (page 4):

"The necessity for mutual agreement exists; if it does not come about, then it depends on the belligerent(s), whether he wishes to base the law of his country, especially in regard to economic war, on one or the other concept of war."

-quoted from Final Plea Kranzbuehler in Case 5, page 17, note 3) and 4)-

-also compare Schneider-Exh. 103A, Book II-

This applies particularly to the problem of the production potential which, with the technical weapons, their number and destructive force, has become a condition sine qua non of warfare for each party.

Article 52 of the Hague Land Warfare Regulations was not intended to and could not solve this problem as it was drawn up under different conditions.

Article ⁴⁶~~44~~ of the Hague Land Warfare Regulations in its wording does not, however, expressly protect the domicile and freedom of the population of the occupied territories. Therefore the Commission of the German Reichstag 1928 states the following at the end of its resolution under 6):

"The Committee considers it most necessary that the whole chapter of internment and of possible deportation of civilians during the war should be made the subject of new fundamental regulations based on the principles of International Law and that moral and humanitarian considerations, which usually speak against such harsh measures adopted during the World War by both sides, should be given due consideration."

-Schneider Exhibit 103, Book II, page 26-

An amendment of the principles in International Law also pertaining to this question would therefore have appeared necessary and indicated.

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A further development is fully confirmed in the following statement of the IMT:

"Regulations governing warfare are not only based on agreements, but on the customs and habits of the nations which have gradually gained recognition, and on the general legal principles which are elaborated by jurists and applied by military tribunals. These regulations are not rigid, but constantly adapted to a changing world."

-German p. 16458, Engl. p. 51 (official edition).

In view of the means of combat, described above, against the production capacity of a country, and the decisive importance of manpower, the mobilization of all manpower available to a belligerent state appears to be a military necessity. Its requirements, however, are greatly predominant in the rules governing warfare in accordance with the preamble to the Hague Land Warfare Agreement and now also justify modern air warfare, thus establishing a deviation from article 25 of the Hague Land Warfare Regulations.

Finally it must not be overlooked that at the time when the forced labor program 1942 was realized, the German nation was in a most difficult position in every respect and felt most severely threatened by the vast armies of the Soviet Union, so that the aspect of self defense must be considered as an excuse for formal violations of International Law.

"Wheaton, International Law, 5th edition by Coleman Philipson, London 1916,

p. 87: "Of the absolute international rights of States one of the most essential and important, and that which lies at the foundation of all the rest, is the right of self-preservation."

p. 89: "In pursuance of the fundamental right of self-defense certain extra territorial acts involving a breach of International Law and a disregard of the rights of other states may sometimes be resorted to on the ground of urgent necessity."

-quoted from Final Plea Kranzbuehler in Case 5, p. 7, Note 2.)-

"Oppenheim: International Law, Vol. 2, Third Edition by Ronald F. Roxburgh, London 21, p. 601:

".... necessity in the interest of self-preservation is according to International Law an excuse for illegal act."

-quoted from Final Plea Kranzbuehler in Case 5, p. 8, Note 1) where further individual instances from English history are dealt with.-

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- cf. also IIT, official edition, English transcript 36, German 16437 -

In view of these principles and the development described, which all sections of the German people had to experience in a particularly intensive form, does it not seem conceivable that not only the German government but also sections of the German people should consider the forced labor of foreigners in Germany during World War II a hard measure, but one that was unavoidable - at any rate, if it was effected in a humane manner in the sense of the preamble to the Hague Convention for Land Warfare - and which was absolutely necessitated by the changes in war technique and in the principles of international law in other matters.

- SCHNEIDER-Exhibit 213, Book VI
Affidavit FINKELTSCHER, page 78 -

In this connection it must also be remembered that at that time all sections of the German people were living under the most difficult conditions, subjected to very severe restrictions in their liberty and work and that the side which achieves military success generally does not understand if it has to endure worse living conditions than the vanquished. This psychological factor is also expressed in the provisions of the Potsdam agreement under II, section 15b, according to which the standard of living of the German people is not to be higher than that of other European nations, with Great Britain and the Soviet Union as exceptions to this rule.

If this should be met with the retort that Germany was the aggressor and is therefore not entitled to refer to these principles, it must be pointed out that the judgment of this court in case 7 recognized that the suppression of the guerrilla war also in world war II was justified and pointed out that the position of the individual state as aggressor or aggressor does not have any bearing on the application and limitation of the

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rights and duties of belligerents under international law according to the Hague Convention for Land Warfare and the recognized rules of international law.

- Judgment Case 7, German transcript pages 21 - 25, English transcript, pages 10439-40, 10443-44 -

Any other interpretation would mean the end of international law, for in every war it is customary for each belligerent to consider himself more or less as the party attacked.

Finally, in considering compulsory labor service even outside the native country concerned, the development since the cessation of hostilities in world war II must not be overlooked.

- SCHNEIDER Document 9, ident. No. 109/Doc. 11, ident. No. 110/
" 6, " " 111/ " 227, " " 112/
" 247, " " 113/ " 264, " " 114 -

The second in particular of the documents mentioned provides for the utilization of German workers outside of Germany also. The Allies, as far as can be judged from announcements made up to now, are of the opinion that the Hague Convention for Land Warfare is not applicable after the unconditional surrender and that in spite of these rules they are exercising a special governmental power, although according to specific declarations no annexation of Germany or anything like it has taken place. Thus it is a novum in international law. Actually it was to be expected that after the cessation of hostilities and the elimination of the exigencies of war, all measures taken should at least comply with the rules of the Hague Convention for Land Warfare. The idea of mass punishment or of reprisals was rejected and would not be in agreement with the principles of international law, for instance - judgment Case 7, German transcript page 30, English page 10448 -

The same applies to the retention of the prisoners of war, a considerable number of whom have even now, 3 years after the end of the war, not yet been released; this, at any rate, cannot be reconciled with the purport of article

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75 of the Geneva Convention.

It is true that the practices of the powers concerned, vary in all these questions, and this gives rise to the hope that forced labor will not become a permanent institution of international law. At any rate the development outlined shows that the views of many European countries thus far evidently deviate considerably at least from the principles of the Hague Convention for Land Warfare.

3. The regulations concerning living and working conditions of foreign workers in Germany during World War II.

The laws and ordinances which regulated living conditions and treatment of foreign voluntary and drafted workers in Germany were submitted by the Defense. It is hereby proved that - apart from very few exceptional cases which were always opposed successfully by industry - they were such that they did not signify an inhuman attitude towards the foreigners.

In summarizing so far reference must be made to the following details:

The actual enlisting of voluntary workers before and during the war was in the hands of the authorities, and they had complete control of it.

Quotation:

- "1. According to art. I of the law of 5 October 1935 concerning employment, vocational guidance and the placement of apprentices (Reich Law Gazette I, p. 1281), employment service may only be given by offices of the administration of labor allocation. This also applies to the allocation of foreign workers. Furthermore, according to the decree of 23 January 1933 concerning foreign workers (Reich Labor Gazette I, p. 20), foreign workers may only be employed by permission of the offices of the administration of labor allocation. The competence of the administration of labor allocation has once again been expressly established by international agreements with a number of foreign

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states. Measures concerning recruitment and allocation of foreign workers by offices outside the administration of labor allocation must therefore under all circumstances be stopped, as they often run counter not only to German law but also to international agreements to which the Reich is partner; arbitrary recruitment cannot only have serious consequences for the recruiting offices but also for the workers who have been recruited in contravention of the law."

- SCHNEIDER-Exh. 124 Book III - Decree of the Reich Labor Minister dated 10 July 1940. -

"It is moreover essential for the success of the task that from now on all organs of the Party, the State and the economy, the ~~plant managers~~ ^{leaders} as well as all other agencies, organizations and persons, who are not responsible for the direction of labor allocation and fixing of wages, refrain from interfering in the said tasks unless their co-operation is specifically requested by the competent offices.

No more interference of unauthorized persons, even if their action is inspired by the best intentions, will be tolerated in the future!

On the basis of the powers given me by the Fuehrer and the Reich Marshal of the Greater German Reich I therefore decree:

1. The execution of all measures for the direction of labor allocation (including the direction of the younger generation) and for the fixing of wages, in particular the procurement, *combining out* ~~selection~~, distribution, transfer and allocation of manpower (including prisoners of war released for civilian employment), as well as the recruitment and allocation of foreign workers is exclusively the task of the administrative offices of labor allocation and of the offices commissioned by me or other competent authorities.
2. Un-authorized offices, organizations and persons are forbidden to execute the measures listed under No. 1.
3. Persons violating my ordinance will be called to account."
(Underlinings here)

- SCHNEIDER-Exh. 127, Book III pages 46 etc. Ordinance No. 2 of the Plenipotentiary General for the Allocation of Labor dated 24 April 1942.

- cf. also statement STOTHELMG, German transcript page 3750, English page 3725 -

The development of the employment of foreigners during this time up to the beginning of 1942 - also in numbers - is apparent from the article by Ministerialrat Dr. TDM.

- SCHNEIDER-Exh. 126, Book III -

When, after the war situation had become worse, the employment of foreigners became of increased importance,

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The Plenipotentiary General for Labor Allocation (GBA) SAUCKEL, appointed in spring 1942, issued an ordinance No. 4 dated 7 May 1942, regulating in detail the principles of recruiting, but already mentions that compulsory service may become necessary. Under I and II the participation of other German and foreign authorities is defined; furthermore the ordinance demanded that the foreigners should be fully informed on working conditions and that they should be examined as to their skill and state of health. Finally regulations were issued concerning transport, housing, food and leisure time which were certainly worthy of human beings (III and IV).

-SCHNEIDER Exh. 129, Book III.-

The above quotation from the decree of the Reich Labor Minister dated 10 July 1940 and later the ordinance No. 2 of the Plenipotentiary General for the Allocation of Labor (GBA) already show that the direction of manpower was exclusively in the hands of the authorities. The implementation ordinance of 2 March 1939 with form, for the ordinance for conscription of labor of 13 February 1939, served this purpose in the time before the war.

-SCHNEIDER Exhibit 121 and 122, Book III / 85, Book I-

This implementation ordinance introduced a report of requirements of manpower according to the attached form, fixed the allocation of manpower by the labor allocation authorities by applying ^{it} ~~and~~ ^{compulsory service} and suspending ~~compulsory service~~ where necessary.

Under the threat of punishment the ordinance of 1 September 1939 made the cancellation of working contracts and the re-employment of workers subject to the approval of the Labor Office,

-SCHNEIDER Exhibit 123, Book III-

whilst according to the ordinance of 20 May 1942 this authority alone was able to sanction the cancellation of working contracts, even those which had been agreed upon.

-SCHNEIDER Exh. 130, Book III-

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The decree of 16 May 1940 with a very detailed blank form also served the official direction of manpower.

-SCHNEIDER Exhibit 125, Book III-

In filing applications for the allocation of manpower the plants had to use a blank form which - according to its wording - ^{served} at the same time as an application for the assignment of ~~manpower~~. *foreign workers.*

-SCHNEIDER Exhibit 1, Book III-

-Statement Stothfang, transcript German page 3752, English page 3728-

In his statement in Case 5, the witness LETSCH described this direction of manpower by the authorities and especially by the Central Planning, of which SPEER and MILCH in particular and to some extent also SAUCKEL were members, and testifies that up to the time of the reverses on the Eastern front, the procurement of manpower was effected principally on the basis of voluntary enlistment.

-SCHNEIDER Exh. 132, Book III-

This is also very clearly summarized as follows in the affidavit by MINZENMAY, who was head of the Ludwigshafen Labor Office during the war:

-SCHNEIDER Exhibit 131, Book III-

- "2.) Already before the war the Reich pursued a labor allocation policy, according to which the owner, or the factory manager, as the case may be, was greatly restricted by official instructions, and had to expect periodic factory checks. With the outbreak of hostilities, all questions pertaining to labor mobilization, i.e. recruitment, allocation, placement, dismissal, pay, leave and general welfare, were handled to a still greater extent by the authorities, thus freeing the plant leader more and more from his responsibilities. The government regarded the tasks of labor mobilization as so important for securing vital war production, that in 1942 a special Plenipotentiary General for Labor Mobilization was appointed and vested with extensive powers. This Plenipotentiary General appointed Gauleiters as his deputies in the individual Gaue, by his decree of No. 1 of 6 April 1942, at the same time instructing the other agencies to cooperate with him in all questions pertaining to labor mobilization. Every worker, male or female, regardless of whether they were German or foreign

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civilians or prisoners-of-war, had to be allocated by name or prison number, through the labor mobilization authority, i.e. the competent Labor Office or Regional Labor Office.

- 3.) *[degrees of]* The allocation of workers was effected according to an exact method of allocation by priority. Every enterprise had to send in special forms to the competent Reich agencies, stating their manpower requirements on the strength of the compulsory production quota fixed for that particular enterprise by a Reich department. The Reich agencies on their part instructed the competent Labor Offices through the highest labor mobilization authorities, with regard to allocation necessary to meet the manpower demands.

The factory reports on the number of employed and labor requirements were submitted monthly and contained exact descriptions of the type of work and job classification, as well as the tasks of production. The recruitment agencies of the Plenipotentiary General for Labor Mobilization allocated foreign workers to employment offices in so far as they had no free labor at their disposal. The plant leader had no influence whatsoever in the matter of allocation. For instance, it was not up to him to refuse an allocation of workers on the grounds that the policy of the firm was to employ only German and not foreign workers, or prisoners-of-war.

In his ordinance No. 2 of 24 April 1942 the Plenipotentiary General for Labor Mobilization emphasized that for the success of his work it was imperative that from now on all Party, government and economy agencies, plant leaders, as well as all other agencies, institutions and persons, who did not have a responsible part in labor mobilization and wage policy, would have to refrain from concerning themselves with such tasks. The Plenipotentiary General for Labor Mobilization therefore decreed that the ~~direction~~ *[selection]* of all measures for the direction of labor mobilization (including direction of ~~replacements~~ *[selection]*) and wage policy, especially procurement, ~~selection~~ *[selection]*, distribution, transfer, allocation of manpower including prisoners-of-war designated for civilian employment, as well as recruitment of foreign workers, would be the exclusive task of the offices of the labor mobilization administration, and agencies appointed by the Plenipotentiary General or other competent authorities. In this decree, the Plenipotentiary General for Labor Mobilization stated also that he would prosecute persons acting contrary to his decree.

*[the younger generation
F coming out]*

- 5.) During 1942 and especially during 1943 and 1944, the problem of manpower procurement became more and more difficult and labor procurement measures naturally became more stringent. On the one hand factories were told to introduce longer working hours, and find more systematic working methods, on the other hand, conscription laws were also promulgated abroad. The legal basis for this was again ordinance 4, which ruled that for procurement of manpower, conscription and compulsory drafts were now to be adopted in the occupied territories too.

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The difference between voluntary and conscripted foreign workers was, that the former had signed a work agreement, valid for a fixed time, while the latter's employment was indefinite, i.e. for the duration of the war."

Also the living conditions of the foreign workers were arranged in detail by the authorities. Only a selection of these regulations will be submitted, for they cover in all many thousands of printed pages, and besides some of them are not available on account of secrecy, destruction etc.

These documents prove that in principle the living conditions were to be entirely fit for human beings. Thus in the leaflet issued in 1943 humane and just treatment of the foreigners is demanded, and chicanery and ill-treatment prohibited. The same principles are indicated in the decree of the Plenipotentiary General for the Allocation of Labor of 4 February 1943 concerning the Western workers.

-SCHNEIDER Exhibit 135 and 136, Book IV-

Special participation of French agencies is provided for in the decree of the Plenipotentiary General for the Allocation of Labor of 30 April 1943.

-SCHNEIDER Exhibit 134, Book IV-

The control and to some extent the fixing of wages was already placed in the hands of the so-called Reich Trustees for Labor by the ordinance of 25 June 1938.

-SCHNEIDER Exhibit 137, Book IV-

This was effected in a more general way by article 18 of the War Economy Ordinance dated 4 September 1939, with article 21 providing for punishment (number of article erroneously omitted in document).

-SCHNEIDER Exhibit 118, Book III-

By the implementation regulations concerning this ordinance dated 12 October 1939 and the ordinance of 23 April 1941 referring to the above-mentioned ordinance of 25 June 1938, all changes in wages - including piece-work wages etc. were put in the hands of the trustees.

-SCHNEIDER Exhibit 138 and 139, Book IV-

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The decrees and ordinances dated 2 August 1940, 23 January 1941 and 11 June 1942, rule that foreign workers - with the exception of Poles and later the Eastern workers - are to be treated in the same way as Germans, and prohibit any differentiation ^{being made} to the disadvantage of the foreigners, but at the same time emphatically prohibit any differentiation being made to their advantage; this shows that in industry, there was a tendency to place the newly arriving foreigners in an even better position than the indigenous workers. Voluntary and conscripted workers were always treated in the same way, too.

- Statement Stothfang, tr. German p. 3753, English p. 3729 -

In the memorandum for foreign workers dated 4 May 1942, the latter received information regarding their conditions of work and pay, separation allowance, working hours, social insurance, housing, alimentation, leave, duration of contract, transfer of pay, travelling expenses and other matters, special ~~relaxation~~ being made to the fact of their being treated on the same basis as the Germans.

- Schneider - Exh. 140/141/142/143 Book IV -

The ordinance of 29 May 1943, prescribes for the plants - particularly from under 1 - exact and modest rates amounting to/R 1.50 to RM 1.75 for the billeting and full board of the workers, which sums could be deducted from their pay.

- Schneider Exh. 144, Book IV -

With regard to the transfer of wages, attention is drawn to the survey

- Schneider Exh. 143 and 153, Book IV and

- Statement Weiss Tr. Germ. p. 2709-10, Engl. p. 2710 -

The ordinance issued on 1 September 1939 had already made it possible for the authorities to invalidate the labor protection regulations for the duration of the war to a wide extent, and particularly with regard to working hours for women, juveniles and children. This was done in varying degrees by means of numerous regulations; and further-

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more, as has been shown by the documents and other evidence, in principle the same scale was applied both with regard to indigenous and foreign workers with the exception - in the beginning - of the Eastern workers.

-Schneider Exh. 145, Book IV -
and e.g. Aff. Weydanz Schneider-Exh. 52, Book 10, page 30-

The working hours for foreigners, including Eastern workers, were then prescribed in principle by the ordinance dated 8 January 1944; night work for women and juveniles was prohibited, and child labor only permitted to an extremely limited extent in the case of children over 12 years of age; Furthermore, the protection of mothers gainfully employed and of workers against accidents in the plant, was generally introduced, which for the majority of foreigners meant only a confirmation of the existing conditions.

-Schneider-Exh. 141/142/146 Book IV-

With regard to the food situation connected with government controlled ~~of~~ ^{economy} ~~industries~~, reference is made to the affidavit by Schmid and the threat of punishment contained in the decree dated 26 November 1941,

-Schneider Exh. 239, Supplement Book II
-Schneider Exh. 120, Book III-

as well as to the circular decree by the Reich Minister of Food dated 22 March 1943, and concerning alimentation in camps, from which I quote the following as an example:

- "1) All workers who are housed in camps and who receive communal ^{on} food in the camps will, on principle, receive the food rations of long-hour-workers which consists of
- | | |
|-----------------------|------------|
| meat ration per week | 450 grams |
| fat ration per week | 225 grams |
| bread ration per week | 2800 grams |
- In addition to this the food establishments of these communal ^{if} camps will with appropriate application of the regulations for canteen kitchens receive per capita and per week:
- | |
|---|
| 30 grams of flour |
| 60 grams of farinaceous foods or potato starch products." |

-Schneider Exh. 156, Book IV-

This completely normal scale of rations speaks for itself. The rations allotted to communal ^{city} labor camps - the same quantities for Germans and foreigners - may be seen in approximately the same manner from

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- Schneider-Exh. 159, Book IV
- and e.g. aff. Polster, Schneider-Exh. 41, Book X P. 77-
- Statement by Weiss, tr. Germ. p. 7709, Engl. p. 7640-

The extraordinarily unfavorable development of the German scale of rations and calories since the war and until 1947, is shown by the diagram submitted and the following documents, which are important as comparative material in relation to the above-mentioned Schneider-Exh. 158 and 159.

- Schneider-Exh. 160/161/162 Book IV

At first, the regulations as contained in the law dated 13 December 1934, as well as the carrying-out orders dated 24 October 1938 were in force with regard to the construction of accommodation; they contained precise instructions concerning the manner of construction, amount of living space (Belegungsdichte), furnishing, sanitary installations, sick-rooms etc.

- Schneider-Exh. 154, Book IV-

The decree dated 4 June 1942 and implemented through competent offices, served to effect the prompt elimination of all difficulties which arose during the war in connection with the housing of foreigners as a result of the government control of all necessary commodities.

- Aff. Schmid, Schneider-Exh. 239, Supplement Book II
- Statement Weiss, Tr. Germ. p. 3708, Engl. p. 3685
- Schneider Exh. 155, Book IV-

The decree by the Plenipotentiary General for Labor (GBA) dated 15 July 1942, ordered a strict inspection of the housing, alimentation and treatment of the foreign workers by the Labor Offices.

- Schneider Exh. 156, Book IV-

A decree dated 14 July 1943 issued new instructions regarding the construction of camps in relation to the furnishing of sleeping quarters and day-rooms, alimentation, washing facilities, sick-rooms, supervision, sanitary installations etc. and which in Article 4 Fig. 2 provided for the allotment of at least 7 cbm. of air space for each individual in the sleeping quarters.

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-Schneider-Exh. 157, Book IV-

The provision of clothing, particularly for foreign workers, is

described in Bisle's affidavit and the attached schedule:

From this the following may be quoted:

Page 85:

giving "The Camp Economic Office (*Lagerwirtschaftsamt*) and its supervisory authority, the Regional Economic Office in Munich, did everything within their power to provide the foreign workers who were located in the military economic district III speedily and in good order with ~~buying~~ permits for clothing, underwear, shoes, soap and laundry-soaps. In this effort I had the energetic assistance of those plants which employed foreign workers."

page 86:

"The provisioning of foreign workers with rationed consumer goods was, in comparison with German workers, good during the first years of the war. This led therefore repeatedly to complaints on the part of the German workers. Due to the heavy airraids on armament plants and on the larger cities, which started about the middle of 1943, the provisioning of the camp inmates, including of course the foreign workers, which up to then had been good, began to suffer.

The so-called clothing for Eastern workers and also the underwear for Eastern workers, which was mostly produced in the clothing and underwear-factories of the occupied Eastern territories and was made of (illegible) new cloth and new materials, was especially the envy of the German workers. With their buying-permits they were not able to obtain such substantial and warm clothing and underwear as was supplied to the so-called Eastern workers."

page 87:

new "These foreign workers who escaped from this air-raid with their bare lives only, received on this occasion besides two new sets of underwear, jackets, pants, waistcoats, skirts, blouses, aprons, winter-coats, working-clothes, kerchieves, foot-cloths and hose."

-Schneider-Exh. 163 and 164, Book IV-

The decree of 19 September 1941 had already directed the continuous supervision of the labor camps with regard to health services by means of a detailed schedule consisting of 8 pages.

-Schneider-Exh. 166, Book V-

The decree by the GBA dated 5 February 1943, confirmed that in principle the legal Reich directives regarding health insurance for Germans were to apply in respect of foreigners - with the exception of Poles and Eastern workers.

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-Schneider-Exh. 169, Book V-

The regulations regarding leave for foreigners - with the exception of the Poles and Eastern workers - were adapted according to the Reich tariffs and decrees, and applied in principle, in the same way as for the Germans.

-Schneider Exh. 147, Book IV-

- and e.g., Affidavit Polster, Schneider-Exh. 41 Book IX, page 79.

Married foreigners could claim leave to visit their families after every 6 months of employment and unmarried foreigners after every 12 months. In view of the fact that difficulties had arisen with regard to travelling facilities even for Germans, owing to the aerial war, they were in this respect placed in the same position as the foreigners.

-Schneider-Exh. 148 and 150 Book IV-

Even prior to this, through numerous state ~~agreements~~ ^{treaties}, many foreigners - including also members of the Protectorate of Bohemia and Moravia - had been placed on an equal footing with the Germans since 1940.

-Schneider-Exh. 149, Book IV-

However, as shown by the evidence and the documents, this was partly eliminated by the developments of the war, and through decrees issued by the authorities.

-Prosecution Doc. Exh. 1372, Book 70-

According to the decree by the GBA (Plenipotentiary General ^{for} ~~in charge of Labor Supply~~ ^{Allocation}) dated 11 October 1943, the attention of the Betriebsführer had to be drawn to the fact that they were only to grant extensions of leave to the foreigners, with the consent of the labor office; hitherto they had granted them in numerous cases without further ado.

-Schneider-Exh. 151, Book IV-

The order dated 11 August 1944 cancelled all leave for indigenous personnel and foreigners, in view of the war situation.

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-Schneider-Exh. 152, Book IV-

The interpolation of the German Labor Front, on behalf of the foreign workers, is demonstrated by the decrees etc. dated 9 September 1940 and 20 September 1943.

-Schneider-Exh. 170 and 171. Book V-

However, in this connection reference must be made to the affidavit by MINZENMAY, where under 4) it states:

"If ordinance No. 2 greatly reduced the plant leader's influence in labor allocation and wage policy matters, ordinance No. 4 issued by the Plenipotentiary on 5 July 1942 also greatly curtailed his powers with regard to the welfare of foreign workers. According to the ordinance the welfare of the non-agricultural foreign workers employed in the Reich was to be the concern of the German Labor Front, especially housing, food, leisure time activities, transfer of wages, savings, letter and parcel post, furlough travel. As the German Labor Front did not have appropriate social institutions in already existing factories, the managements of many factories continued to a great extent in their welfare activities for the foreign workers, in spite of this instruction, and they also took steps for a progressive improvement of their living conditions."

-Schneider-Exh. 131, Book III-

In all instances, however, the German Labor Front exerted a certain propagandist influence on the organization of free time, from which the factories could not disassociate themselves, because as far as sport was concerned, for example, it brought the foreigners many advantages.

-Schneider Exhibits 165, 166, 167, Book IV-

I now come to the special treatment meted out to the Eastern workers by the Government, the reasons for which were the danger of Bolshevism and the low standard of living in the East; however, this was always justly and successfully contested by the industries.

-Statement Stothfang, tr. Germ. p. 3757, Engl. p. 3734-

This special treatment was already decreed in the order dated 9 February 1942, which in principle excluded the Eastern workers from German regulations concerning labor legislation and the legislation regarding the protection of labor e.g. social insurance and the granting of leave, and which, although they were generally

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paid at the same rates as the other workers, decreed that they should be liable to higher special taxes or levies.

-Schneider-Exh. 172 and 173, figures 1 - 4 Book V-

However, in the decree dated 4 March 1942, rules were laid down regarding medical care for the Eastern workers, and directives were given that a monthly payment in this respect amounting to 4 RM per person was to be made on the part of the entrepreneur. Following the decree dated 1 August 1942, family health benefits etc. were then granted, whereby to a large extent the Eastern workers were actually placed on the same footing as the other workers.

-Schneider-Exh. 174 and 178 Book V-

In addition to this and with regard to labor protection, attention is also drawn to the exhibit already mentioned, viz. Exh. 146 in Book IV.

Memorandum No. 1 for the Betriebsfuehrer and issued in the summer of 1942, provides for isolated employment - among many other things - of the Eastern workers, which is based on the above-mentioned official reasons.

-Schneider Exh. ¹⁷⁶~~169~~, Book V-

Article 2 of the decree concerning employment conditions for the Eastern workers and dated 30 June 1942, again precludes the application of regulations pertaining to German labor legislation, thus for example the law concerning the ~~direction~~^{regulation} of national labor, with regard to Eastern workers. The appendix attached to this decree indicates the above-mentioned tax for Eastern workers which according to articles 10 and 11, the plants were to pay to the German Reich.

-Schneider-Exh. 176, Book V-

As early as in 1942, additional payments for efficiency and the uniting of families was permitted, while the decree of 4 January 1943 ordered a thorough examination by the authorities of the sanitary conditions in the camps.

-Schneider-Exh. 177/179/180 Book V- Through the decree dated 5 March 1943 and its appendix, and the decree dated 23 July 1943, the special tax amounts were then reduced; premiums for length of employment; and other improvements were introduced; -Schneider-Exh. 181 and 182 Book

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By decree of 25 March 1944 and its carrying-out regulation of 26 March 1944, wage and salary conditions for Eastern workers are the same as those for other foreigners. (par. 2 of the first decree). They are entitled to leave and visits to their homes (par. 5 of the same decree), which admittedly was at that time a somewhat theoretical proposition. Instead of the special tax, they now have to pay the general wage tax, and instead of the other, in practice admittedly somewhat lower social security taxes of the rest of the German and foreign workers, they must now pay a 15 % social compensation tax. (Par. 9 and 10 of the same decree).
Schneider Edh. 183 and 184, book V -

When Eastern workers were first employed within the territory of the Reich in February 1942, the Reichsfuehrer SS, by decree of 20 February 1942, issued extremely strict regulations on the treatment of Eastern workers, those on the matter of their isolation at work and in camps fenced with barbed wire appearing in paragraphs III and IV, guards in paragraph V, and competence of the Gestapo in paragraph IX.

Schneider Edh. 185, book V -

The decree of 9 April 1942 already means a mitigation through rescission of the regulation prescribing barbed wire fencing of ^{the} camps and separation of families, as well as that of the absolute prohibition of movement outside the camp. In view of its further relaxation, as attested by various witnesses, and its final rescission, the special Eastern workers identification patch, which most people always condemn, was then introduced in Germany by decree of the Reichsfuehrer SS of 12 November 1942.

Schneider Edh. 186 and 187, book V -

For instance testimony Peantek, transcript German page 7679, Engl. p. 761
A corresponding ^{decree} for Poles had already been issued as of 8 March 1940.

Schneider Edh. 200, book VI -

I have not introduced other regulations pertaining to Poles as documents in order to avoid an unnecessary overburdening of the Tribunal with material.

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That everything was regulated by official rules, also in regard to Police, is apparent from the text and meaning of prosecution documents ^{1878,} exh. 1899 and 1900, book 70. The further documents of Schneider book V then show the gradual improvement of the Eastern workers' rations, which were at first inadequate, but still extraordinarily ample, ^{as} compared with present German standards.

Schneider, Exh. 188-191, book V, particularly page 71. -

The factory security police, often discussed in the trial, was established through joint action of the Wehrmacht High Command and the Reichsfuehrer SS, and subordinated to the police.

Schneider Exh. 192, book VI -

Testimony Weiss Transcript German page 7714, English page 7645.

Due to the turn for the worse in the war situation, the increasing importance of forced labor at home and abroad and the difficulties arising therefrom the ordinance of 20 July 1942 set down the consequences of breaches of work contract, and further requisite measures.

Schneider Exh. 193, book VI

Shortly prior to this, Gestapo regulations of 24 June 1942, had dealt in a general way with the same subject, in particular with escape attempts by Eastern workers. This extraordinarily stringent decree, explained by the Bolshevik danger, says:

"Responsible for the guard is the security agent - if there is none - the factory guard leader - if there is none - the factory leader and the camp commander. They are responsible to the State Police for the prevention of attempts to escape. Any negligence which might occur will be severely punished by the State Police. The enclosure and guard will therefore be arranged in such a way that attempts to escape will be useless.
The expenses for the guards - unless public officers are assigned - are to be borne by the factories. They will also furnish billets for the guards."

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page 28:

"At the slightest sign of insubordination or disobedience reckless counter-measures should be taken and weapons should be used unsparingly in order to break up resistance. They should shoot at fleeing Russians with the definite intention to hit them.

page 29:

"Grave violations of the discipline, insubordinations, acts, or attempts of sabotage, cases of sexual intercourse with German women and criminal offenses are to be reported immediately to the supervising GestapoSub-regional Hq. (Branch Office) Until further orders have been issued the respective worker (female worker) is to be held under arrest."

Schneider Exh. 197, book VI -

The decree of the Plenipotentiary General for Labor and Reichsfuehrer SS, dated 9 February 1943 contains the following clause regarding the same subject:

"When all internal factory means available to the factory manager in cooperation with the German Labor Front are exhausted, the factory managers will in future submit all reports on lack of work discipline of foreign workers including those from the Protectorate and Poland to the state police agencies. In places without Gestapo agencies these reports will be sent to the local police authority."

Schneider Exh. 195, book VI -

In decree 13 of 1 November 1943 the Plenipotentiary General for Labor again deals with the consequences of breach of work contract and disciplinary offenses and in par. 5 therein he again prescribes reports to the competent police agency - during the war, the aliens' police, as the witness Weiss testified, in effect always meant the Gestapo - in the case of grave offenses by foreigners, such as escape,

- Testimony Weiss Transcript German page 7714, English page 7645 - threatening punishment for non-complying factory managers.

In the following extremely pointed sentences, the decree of armament minister Speer of 2 March 1944 again refers to the said ordinance number 13:

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page 22:

"During the coming months we shall have to complete tremendous programs and it is our profound duty to utilize the available labor for obtaining the best possible results. Among the masses of workers there are always some who have a bad idea of discipline in their work. It is true, they are only a very small minority; nevertheless, it is imperative, in order to avoid any bad example, to proceed most severely against such elements.

page 23:

"Loafers and those who commit a breach of their labor contract will be punished according to the circumstances of the offense. As is laid down in the attached Decree the educational measures of the plant should be applied first, whereby it is highly recommended that the German Labor Front be called in. Should these educational measures not suffice, notorious idlers, that is to say therefore mischievous (boeswillige) elements and those committing a breach of their labor contracts, will be severely dealt with. They will be sent to a Disciplinary Labor Camp for a period not exceeding 56 days, or, in serious cases, to a concentration camp. Whether an offender shall be sent to a Disciplinary Labor Camp or to a concentration camp, and for how long, shall be decided by the competent Police Regional Hq. Workers will, in principle, after their release from detention, be directed to their former plant. Therefore, no plant will permanently lose workers on account of their being reported. It is incomprehensible to me to find that part of the plant leaders have not made use of these measures and prefer to allow permanently for a certain amount of absenteeism (Fehlstand) on account of idlers. It is the task of plant leaders to decrease the absenteeism for reasons of performance with all the means at their disposal, and to see to it that a large number of workers present themselves for work in all circumstances and during all seasons."

Schneider Exh. 196, Book VI -

The decree of the Plenipotentiary-General for Labor, dated 10 March 1944, again dealt with the same subject, sample blank forms similar to the corresponding prosecution documents, being attached, and reference being made to the duty to report lack of discipline to the state police (section 2).

Schneider Exh. 198 Book VI

A Speer note of 13 October 1942, reading:

"The SS and Police could take drastic action here without hesitation and place persons known to be loafers in concentration camp factories. There is no other way. This only needs to be carried out a couple of times, the news will get around."

Schneider Exh. 199 book VI, Index -

shows how rigorous an attitude the German government agencies took in this question. The Fuehrer conference memorandum of June 1944 shows that within the entire German economy about 30 - 40 000 escaped Eastern workers and prisoners of war were monthly recaptured by the police and assigned as concentration camp prisoners for SS projects.

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Schneider Exh. 65 book VI

May I say regarding presentation Exh. 476, book 22 and 67, that this favorable regulation of the General-Plenipotentiary Chemistry refers only to reports on recruited French workers failing to return to their place of work in Germany.

4. Foreigners' Compulsory Labor and German Private Enterprise.
a Responsibility as such.

Above statements under III A 2 prove that the legal problems of conscript and compulsory labor in occupied areas had to be decided differently according to the circumstances, and were in fact extremely difficult to judge from a legal point of view. This may furthermore show convincingly why it never occurred to the millions of German industrialists, businessmen and farmers who had to employ foreign workers during the war, that they were committing a crime, as long as they treated the workers as far as possible humanely according to the prevailing regulations.

e.g. Testimony Giesen transcript German page 7595, English page 7531 -

Along the agreement on slavery, reached by various countries and to this extent also by the US, rules that the central authorities bear responsibility for the enactment of compulsory labor and labor conscription (see above page 49). In fact they alone have the actual possibility and legal competence,

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especially in war, to check up on the legality of their action. This was even recognized in the IMT trials. Thus the French prosecutor de Monthen made the following statement in the IMT trials session of 17 January 1947:

"One cannot, of course, deduce from the proceeding the individual responsibility of all the perpetrators of acts of violence. It is obvious that, in an organized modern state, responsibility is limited to those who act directly for the state, they alone being in a position to estimate the lawfulness of the orders given. They alone can be prosecuted and they must be prosecuted."

Official Record, volume V, German page 436/437, English page 388.

The defendant von Schirach, though according to Schneider Exh. 128, book III responsible for labor allocation in his district in his capacity as Gauleiter of Vienna, was not even indicted for the war crime of deportation of foreign workers, but was for other reasons convicted for crimes against humanity on count IV, the reason obviously being, that, as far as this was concerned, he did not hold a leading, but only a secondary position. Sauckel, who directed the extremely war-vital labor allocation, was found not guilty on counts I and II, preparation and waging of an aggressive war. The same applies to the defendants Bormann and Speer, of whom especially the latter, as armament minister, was leading in the war effort, though not as initiator. Thousands of industrialists and especially officials who were leading in labor allocation, have been set free again and have partly been reinstated in their occupations, some in leading positions. Hereby again, the Allied Military Governments recognized the correctness of the above arguments.

It is irreconcilable with the concept of justice, to call individual industrialists to account for the compulsory labor program, when all they did was to act, within the limits of the latter, exactly like millions of

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Germans in general and many thousands in leading positions under the necessities of the war and the pressure of their country's law. That would mean applying two standards of justice, and this would be out of line with the principles of morality and fairness.

Schneider Ed. 231, book VII

Moral Theological Opinion of Father Max Pribilla S.J., especially page 6 and 28 etc. -

Neither would it be reconcilable with the principles of equal and just treatment, as developed for instance, by the IMT under section 9 - The Accused Organizations IMT, official edition English page 85-86, German page 16502 - 04.

It must furthermore be borne in mind that they did not initiate the deportations as such in any way; on the contrary, they mostly disapproved of them, quite apart from the fact that they had either no knowledge at all of their methods, or at any rate only knowledge based on rumors and other unproved statements.

- see also Testimony Stothfang, transcript German page 3752, English page 3728, on Knowledge of Abuses -

As the international agreement on slavery, article 1, (see top page 48), shows, the issue is not slavery within the meaning of international law. As the foreign workers moreover received a remuneration, it is furthermore not a case of slavery in the sense of the verdict of the Military Tribunal II in Case 4 against Pohl, German page 20, English page 8068, for we are not here concerned with "Compulsory labor without remuneration."

Finally we must not forget the ex-post-facto principle in this connection. Though, according to the principles of the IMT under section 5 (official edition English page 49, German page 16455) and the statements of the Tribunal in the verdict in case 3, German page 30 etc., English page 10634 etc., it is not applied as such in the development of

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international law, punishment nevertheless always presupposes that the person concerned committed a crime in the opinion of all right-thinking men. But this is not so in the case of the private businessman, who, under the pressure of war necessities, carried out the laws and instructions of his government in a situation which he, at any rate, could not judge either from the factual nor the legal angle, and wherein he himself did not perpetrate inhuman acts.

Neither must we forget that according to the continental, and in particular the German concepts of international law, and in decisive questions of military law, even according to American practice, it is not the international law which is decisive for the individual citizen, but the law of his own country.

Schneider Ech. 220/221/222, book VII.

According to all this, the mere employment of foreign forced labor by the individual German businessman or industrialist, cannot, contrary to the opinion of the trial brief of the prosecution in counts III, I, constitute a war crime or a crime against humanity, unless the person concerned is himself guilty of inhuman conduct. There is just as little justification for the charge of a crime against peace. Such an assumption would be irreconcilable with the IMT decision section 6 (Official Edition English page 56; German page 16465-66) and with further decisions of these Tribunals, apart from the fact, that even according to the prosecution theory this would require a verdict of guilty on count I.

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b) Forced production and the state of ^{necessity} ~~emergency~~

Numerous witnesses have testified that when the war began, in the greater part of industry production was governed by official production schedules. This took place partly in connection with the Four Year Plan pursuant to the order dated 5 November 1936 and partly in accordance with the Commodity Exchange Regulations dated 18 August 1939, both of which contained particulars concerning penalties.

- SCHNEIDER Exh. 115/116/117/119 Book III -

For the sake of the forms which have been used here in part, reference is made to SCHNEIDER Exh. 214 and 215 Book VI, particularly in the case of the first named. In view of the increasing difficulties, on 21 March 1942 HITLER issued regulations for the protection of the armament industry, besides a decree, which contained the following passages.

Page 42:

Article I

- (1) Whoever intentionally makes false statements
1. on requirements or availability of manpower,
 2. on requirements or stocks of raw materials, other materials, products, machines or equipment essential for armament-economy, and thereby endangers the procurement of supplies for armament-economy, will be punished with penal servitude and in particularly serious cases, which are of considerable detriment to armament-economy, with death. In addition, unlimited fines may be imposed as penalty.

- (2) In less serious cases, the verdict is to call for imprisonment and unlimited fines, or for one of these penalties.

Article III.

- (1) The People's Court is the competent authority for trying these cases. If the perpetrator is subject to Wehrmacht jurisdiction, the Supreme Military Court there is the competent authority in this instance....." (underlining here)

Page 43a:

"Whoever disregards this trust and offends against the conduct expected of a plant leader, will be subjected to unrelenting, most severe punishment, because by so doing he has, of his own accord, excluded himself from the national community."

- SCHNEIDER Exh. 202, Book VI -

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In addition to the above, further reference is made to the earlier exhibits, particularly to the affidavit by Minzenmay - Fig. 3, Paragraph 2 - with regard to the prescribed monthly reports on supply and demand in relation to labour.

Schneider-Exh. 131, Book III -

The Reich Minister for Armament and Munitions - his office was created in 1940 - and the General Plenipotentiary for Labour issued a joint decree concerning the complete central and regional direction of armament tasks and labour by the authorities, to which was added a further decree issued ^{by} the above mentioned Reich Minister on the same day, and which dealt with the same subject.

- Schneider-Exh. 201/204/205 Book VI.

In the same year, every kind of peace-time planning had already been prohibited ~~and moreover~~, by referring to the above mentioned regulations for the protection of the armament industry as can be seen from the following passage:

"I conclude from the employment of manpower of the abovementioned kind on peace plans that false statements regarding requirements for and present numbers of workers are made within the meaning of the ordinance issued by the Fuehrer on 21 March 1942 for the Protection of the

Armament Economy, and, in view of this ordinance, I shall take ruthless steps against such plant leaders."

Schneider Exh. 203 Book VI # 34

The restrictions placed on the Betriebsfuehrer and entrepreneur and the militarizing tendencies of the Armament and War Production administration become evident from an excerpt from the reports by the Reich Minister for Armament and Munitions, year 1943, page 211.

Schneider Exh. 212 Book VI

An address given by Speer in the capacity of Reich Minister, on 29

January 1943 contains the following passage:

"In his New Year proclamation the Fuehrer has declared that in the year 1943 he expects and must demand from the German armament industry an extraordinary increase in output

Schneider - Exh. 206, Book VI # 37

Speer's decree issued to the Betriebsfuehrer (plant leaders) on 24 June 1943 created the Institute of Labor Allocation Engineers ^{einsatz} (Institut der Arbeitsingenieure) which further limited the freedom of the entrepreneurs and Betriebsfuehrer to a considerable extent as can be seen from the following passage:

"Among other things it will be their function to examine the possibilities of economizing in manpower, to transfer misplaced skilled workers, to see to the strict management of the night shifts, as considerable production reserves are still available there, to arrange for the allocation of conscripted workers and of those maimed by war, they are to examine the possibilities of suitable employment of unskilled and foreign labor, and if necessary, to support to the best of their ability co-ordination and exchange of experiences independently of their particular plant, as ordered by the chairman of the Armament Commission. Schneider Exh. 210, Book VI.

In the Autumn of 1943 the above mentioned ministry was transformed into Speer's Armament Ministry and his competence delineated. - Schneider Exh. 207 and 208, Book VI.

Following this, Speer issued the decree of 29 October 1943, the so-called "tape-worm decree" which delineated his authority in the sphere of armament production and also with regard to the highest and immediate^{ly} subordinate instances. With this, industry became completely militarized as is shown by the following sections of the decree:

Page 56:

"The aim of all measures can only be a further increase in armament production. This concentration of the war economy will also simplify the procedure of giving orders."

Page 57:

"These offices are the *commanding posts* (Befehlshabern) ^F ~~administrative departments~~ for the subordinate independent and self-administrative agencies (see II) in connection with the direction and safeguarding of production, in their charge."

Page 61:

Making the requirements "The plants will receive the orders exclusively from the ~~respective~~ ^{respective} agencies in accordance with the production schedule of the competent committees and rings respectively from the groups charged by me."

Page 64:

"The armament offices regulate the distribution of orders, plant and production transfers including expansions of capacity and the billets required for laborers. They survey the execution

F stipulated between Mr. Wolffsohn and Mr. Horkebaum

of all army orders until they are ready for delivery and, in agreement with the armament, respectively district deputy of the committees and cartels, they see to it that the priority quota of army orders is observed, respectively that special instructions, individually issued by me are, in case of need, complied with by means of temporary decisions.

Page 65:

"The Gau Labor Offices and the offices subordinate to them have the following tasks:
They are responsible for the entire labor allocation in the armament industry. The Gau Labor Offices have to provide for manpower in accordance with the demands of the armament offices. The Gau Labor Offices will transfer labor to bottlenecks, furnish and allocate foreign labor and also see to the allocation of prisoners of war.

Schneider Exh. 209 Book VI-

In German the words "Befehlsgebung" (giving ^{orders} ~~of commands~~) and "Befehlsstelle" (commanding post) are of an absolute military character and imply the organization of industry according to military discipline.

Armament production and the direction of labor were again dealt with in the decree issued by SAUCKEL and SPEER on 22 June 1944 supplemented by the carrying out order of 21 August 1944, and especially in the affidavit given by FIKENTSCHER, who was armament commander from 1942-1945, and which represents a detailed account of the direction of labor and the absolute obedience enforced by the authorities during the years mentioned.

Schneider Exh. 213, Book VI-

The following typical passage is to be quoted from the decree of 21 August 1944:

"6.) As to fundamental questions of the allocation of labor of special significance for the promotion of armaments (mobilization of manpower taken from groups of persons and populations hitherto unemployed, the allocation of disabled soldiers, schoolchildren, German nationals, families, prisoners, concentration camp inmates) both offices have to examine together in which way directives given by central offices can be carried out to bring the best possible results in the districts. Wherever there are difficulties in a plant for the employment of special groups of people, the Armament Allocation Offices have to remove the obstacles with all the necessary means. They also have to ~~promote~~ ^{demand} in every respect .

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the creation of appropriate working conditions for the employment of persons who are not entirely fit straight away."

Schneider Exh. 211, Book VI-

As in the case of ^{most}~~any~~ countries, the ^{fulfilment}~~completion~~ of the production schedules was guaranteed not only by ministerial orders and the institution of terrorist measures, but also by corresponding penal regulations. In view of the wide interpretation of the terms under German jurisdiction, in this respect, besides the regulation governing the violation of war supply contracts which is contained in Article 92a of the Reich Penal Code, and apart from the law of 25 November 1939 and Article 5 of the Defense Regulation (Kriegssonderstrafrechtsverordnung) dated 27 August 1938 - which furthermore was first published in 1939 - Article 91b of the Reich Penal Code, relating to acts favoring the enemy, is of particular interest with regard to official production schedules. According to its sense, this article is not entirely unknown in other countries; it runs as follows:

- I. Whoever, in the home country or as a German abroad, undertakes, during a war against the Reich or in relation to a threatening war, to further the cause of a foreign power or to injure the forces of the Reich or its allies, shall be punished by death or penal servitude for life.
- II. If the act caused only a minor disadvantage to the Reich and its allies and only a slight advantage to the hostile power, was not even likely to cause serious consequences, a sentence of not less than two years imprisonment with hard labor may be passed. ..."

-Schneider Exh. 216, Book VI-

-Schneider Exh. 218, Book VI-

The commentator on the Reich Penal Code - SCHWARZ delivers himself as follows on this article ^{91b} (mistakenly described in the Document Book as article 92 or 92a, as testified by the undersigned and as can also be seen from the context):

- "2.) The undertaking suffices for the action. Compare Section 87 A 1. It can consist in A. Helping of an enemy power; the latter must be in a more favorable position because of the action whether from a military or economic point of view; for helping of an enemy "power" (not merely a belligerent power) is enough RMG (Reich Military Court) 21,196. This is indirectly to the advantage of the

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belligerents, E 51, 282. Frank Supplement I; Leipzig. Section 89 A, 1; Olsh. Section 89 A 3. So by subscription of enemy war loan; by importing goods even if no export prohibition exists, Frank Supplement I; similarly, even if it is only indirectly to the advantage of the enemy state; by supplying its citizens; further by destruction of crops raised at home, E 51, 282; possibly by favoring the escape of enemy prisoners of war, RMG 21, 196; by war profiteering at home, Leips. Section 89 A 5; or in

B. putting the German Forces at a disadvantage. This fact of the case often fulfils that at A; but here injury to the German Forces therefore not to the state as such is demanded. If a unified action results in disadvantages for the war potential, it is true, but, at the same time in greater advantages (for example by the arresting of a munition workers strike by a foreman (Arbeiterfuehrer) then according to E 65, 430; Frank II end of page, no high treason is supposed to exist (very doubtful!).

- Schneider Exh. 217, Book VI-

The jurisdiction quoted therein, according to the quotations, originates from the time before the last war, chiefly from the 1st World War, since the jurisdiction of the Reich ^{Military} War Court and the Peoples Court was kept secret and not published. If even at that time, according to the above, war usury, the destruction of inland field crops and strikes, if any occurred, were condemned as actions favoring the enemy, there is no doubt that under the National Socialist regime the refusal to accept foreign workers which at a later period in the war were the only ones available, and the non-completion of production schedules which would thereby have arisen, would have been regarded by the competent courts as an act favoring the enemy, i.e. treason, and would have been very severely punished, in some instances by sentence of death.

The extremely strong measure of compulsion which was brought to bear on the Betriebsfuehrer in this connection, is made particularly apparent by the following statements:

"Witness WEINHARDT in Case 5:

Herr SAUER started his activities at Leipzig by way of a very large conference which lasted for an hour or two. In this meeting, it became already apparent that any objections to the orders of the Fighter Staff, in other words SAUER, was

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Flighter Staff
almost a danger for your life. In this meeting which was composed of quite a number of industrialists, generals of the air force, and members of the ~~SAU~~ ^{SAU}, the directives were laid down by Herr SAUER in the most ruthless manner to the industry and the officers. He did not leave any doubt at all that even the slightest attempt at obstruction against his instructions would begin with the concentration camp; and if the Tribunal permits me to express myself in a little bit more drastic manner, it would end at the wall or with shooting to death. The meeting was so violent that even SAUER treated the generals of the air force in a most incredible manner. I am going into quite a bit of detail here because I want to give as complete an answer as possible to the defense counsel.

-Schneider Exh. 228, Book VII-

Witness PLEIGER in Case 5:

"Especially during the last years when so much was destroyed, when so many difficulties arose, the entire German people of course found themselves under a tremendous pressure. That is quite evident that stemmed from the military development. Let us assume that a plant manager said, 'I am not going to produce more, I don't employ any foreign laborers', within a space of five minutes this statement would have been known in the competent political and police agencies, and he would not only have been thrown out of his job, but even locked up.

...
I was never in the People's Court. I can only tell you what I heard about that, and that Goering told me one time that if Salzgitter Watenstaedt doesn't function properly I ~~will~~ ^{would} be put before a People's Court. I imagined that I would be beheaded then.

-Schneider Exhibit 227, Book VII-

In view of the necessity of ~~completing~~ ^{meeting} the production schedules, the countless entrepreneurs, Betriebsfuehrer (plant leaders) and farmers also had no opportunity of refusing to employ the foreign workers assigned to them, as has been proved in ~~an uncertain~~ ^{impressive} manner by the evidence. Even the refusal to accept foreign workers, particularly on the part of a large enterprise, would have led to the most serious consequences.

-Statement Letsch in Case 5,

Schneider Exhibit 132, Book III-

-Statement Speer in Case 5,

Schneider Exhibit 229, Book VII-

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-Statement Stothfang, transcript page 3762 ff., English page 3739-		
-Statement Schieber	" "	5295-96, 5270-
-Statement Milch	" "	5366 5337-
-Statement Giesen	" "	7594 7530-31
-Statement Weiss	" "	7704 7636-

In this connection, it is also significant that as a result of the state direction of German industry, widely introduced before the war, and enforced in its entirety during the war, as can be seen from numerous testimonies and particularly from the books concerning the regulation of industry in the Third Reich submitted by Dr. BERNDT, German entrepreneurs and Betriebsfuehrer had become more and more dependent upon and restricted by the authorities. The witnesses Kastl, Lammers and Gritzbach in particular have made statements regarding the ~~officially~~ ^{semi-official} position of the entrepreneurs, the terrorisation by the law and the S.D. (Security Service) *in the plant.*

-Transcript page 2288-89, English page 2295-97-		
" " 5759-63		5719-23-
" " 5676		5636-
" " 5684		5644-

This is also very apparent from the statement, illustrated by examples, given by the witness Flick,

-Transcript page 9137-45, English page 9041-49-

and the following statements made by the highly respected, now Swiss Professor Wilhelm ROEPKE - who emigrated from Germany in 1933 - in his book entitled "The German Question" and which also appeared in America :

"Page 46

. . . This applies above all to the treatment of private property. Just as the Church was openly persecuted in Russia whereas in the Third Reich it was undermined, as far as possible, so was ownership in production-goods openly abolished in Russia, whereas in the Third Reich, by constant curtailing, of the rights and functions of the owner, it deteriorated so badly that it became an empty shell which was allowed a continued existence for merely propagandistic reasons. Thus the way in which private property was abolished was different in each case but the effect was more or less the same.

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"In addition to this the character of National Socialism was undoubtedly from the very outset much more a gregarious one than that of fascism and was far more deeply rooted in the proletariat. It had from the very beginning aimed at winning for itself the broad masses of the laborers and employees, and the fact cannot be denied that this aim was reached to a high degree especially where the younger generation was concerned which could not fall back on the liberal tradition of the old trade-unions. Contrary to the present wide-spread opinion it was these proletarianized masses lacking in tradition which were the mainstay of National Socialism; it was they whom it tried to flatter and they were only too ready to be courted; National Socialism endowed them with an importance which increased their self-assertive attitude till it became arrogance; they were treated with an amount of leniency on which to count would have been suicidal for an employer. Compared with these social strata a not inconsiderable part of the bourgeoisie behaved in a much more dignified manner....."

- SCHNEIDER-Exh. 224, Book VII. -

I wish to make further reference to the fate and the death of the mining director RICKEL. As mentioned before the verdicts of the high German courts were secret during the war, and such verdicts became available only by chance.

The fact that scientific and professional ^{efficiency} ~~knowledge~~ were no protection against persecution if one was not acceptable to the regime is borne out by the fate of many Jewish and non-Jewish scientists.

- Affidavit FRICKE, SCHNEIDER Exh. 225, Book VII, -
Statements KLEIDING, German transcript, pages 7645 to 46, English, pages 7578 to 79.

The IMT has already established that

"Hostile criticism, even criticism of any kind was forbidden, and those who engaged in such criticism were punished with the severest penalties. An independent opinion based on freedom of thought was therefore absolutely impossible."

- IMT official edition, English, page 12, German, page 16405. -

Even if in individual cases many things could be prevented due to favorable connections or for some pertinent reasons advantageous to the National Socialist regime, it was still not possible to offer the National Socialist regime any resistance in a fundamental question of such importance for the war

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as that of forced labor by foreigners. Such a case would undoubtedly have been reported to the competent agencies and, if a large undertaking was involved, a report would have been made to one of the leading personalities. The latter would have taken far more severe action as for reasons of propaganda and because of the danger of espionage and sabotage the regime decided on these compulsory measures only relatively^{late} in most countries, and as there was a special fear of the growing animosity of the countries concerned. Because of that all resistance within Germany would also have been broken ruthlessly.

It has to be added to this that, in view of the doubtful position in law and in fact resulting from the aforementioned explanations under III A 2, the person concerned could not adequately justify his point of view, quite apart from the fact that according to German law national law takes precedence over international law, as mentioned before (page 82). The strength and irresistibility of the power of the state, according to German law, is also confirmed in the excerpt from the book "Staatsrecht und Naturrecht" by VOLZENDORFF, submitted by me at the end of the document.

Schneider Exh. 223, Book VII.

Any resistance would have been practically purposeless, as a successor of the person concerned would have continued the latter's program at the government's instigation. Hence, resistance towards the program would only have destroyed the livelihood of the person concerned, his family and his collaborators. In view of this actual, legal and moral situation there was in this case not only an order within the meaning of the Control Council Law, but a condition of compulsion under which a free choice in the sense of moral law was not possible.

- SCHNEIDER Exh. 230 and 231, Book VII. -

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Reference is made here to the excerpt from the IIT records submitted and especially to the ethic-theological expert opinion given by Pater PRIBILLA.
- SCHNEIDER Exh. 230 and 231, Book VII -

The Gestapo terror and the inhuman criminal justice meant an ever-present and uncertain threat to all people who opposed the regime and its measures. Thus, when the forced labor was allocated for the fulfillment of the official production schedules during the war, the industrialists, too, were faced with ~~an emergency~~ *a state of necessity* which made it practically impossible for them to offer any resistance.

Particularly in view of those circumstances the judgment given in case 5 of the Military Tribunal acquitted the indicted industrialists and Betriebsfuehrer of the responsibility for the forced labor program.

Judgment, Case 5, German pages 10728 to 36, English pages 10988 to 95.

B. SCHNEIDER's personal sphere of responsibility with reference to conscription and forced labor.

(Trial Brief of the Prosecution, part III, II E)

1. In the whole of the I.G.

a) His responsibility as Chief Betriebsfuehrer

In 1938 SCHNEIDER was appointed Chief Betriebsfuehrer, or Leader of the Enterprise for the whole I.G., by the Vorstand of the IG. This is a term and a task under Social and Labor Law. The expression "Chief Betriebsfuehrer" is not used in the law. Apparently the IG. took it over from other large enterprises even prior to SCHNEIDER's appointment, as a parallel to the Chief Betriebsobmann of the German Labor Front belonging to the plant Beirat.

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For this function the Law for the Regulation of National Labor (MOG) uses in article 17 the expression "Fuehrer des Unternehmens".

- Statement SCHNEIDER, German transcript, page 7459, English " " 7393 -
- Statement WEISS, German transcript, page 7697, English, page 7629 -
- SCHNEIDER Exh. 35, Book IX -
- Affidavit WEISS, SCHNEIDER Exh. 36, Book IX -

Regarding the ^{competence}~~identity~~ of the witness WEISS I wish to refer to the German transcript, page 7685, English, page 7616.

The responsibility of the employer or Fuehrer of the enterprise is only an indirect one, as may be seen from the affidavit of the high ministerial official and creator of the Law for the Regulation of National Labor, LANSFELD, submitted by the Prosecution. In this connection he makes the following statement:

Alien to the plant

"The employer himself was responsible in the first place for the carrying out of this welfare obligation. If, however, he was ~~not familiar with the industry~~ and therefore was represented by a Betriebsfuehrer he was responsible for the choice and the retention on the job of this man and thereby responsible indirectly."

Prosecution Exh. 359, Book 67, German, page 274, English, pages 147/48.

- compare also Prosecution Exh. 1309, Book 67 -
- Statements WEISS, German transcript, page 7689, English, page 7630 - (In this connection there was an error in the German transcript, page 7697, English, page 7628; it was either an error regarding the expression used or an error in the transcript.)

According to the Law for the Regulation of National Labor (MOG) the person directly responsible for employee- or social matters is the Fuehrer des Betriebes or the Fuehrer of the individual plant, who works there in a leading position and is familiar with the plant.

~~In this connection reference is made to articles 1 and 2 of the MOG.~~

Generally this is the employer and, in corporations, the legal representative, for instance, in the case of a limited company, the Vorstand. In this connection reference is made to articles 1, 2 and 3 of the MOG., which read as follows:

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Article 1

Staff
Business Manager and ~~Personnel Chief~~.

In the enterprise the owner as manager of the enterprise, the employees and workers as staff, shall cooperate to promote the objectives of the enterprise, and for the common good of the nation and the state....

Article 2

(1) Concerning the staff, the manager of the enterprise shall decide in all business matters, as far as they have been regulated by this law.

(2) He is responsible for the welfare of his staff. On the other hand, the staff is obliged to remain loyal to him, in keeping with the community spirit of the enterprise.....

Article 3

(1) In the case of body or bodies corporate, the legal representatives shall be managers of the enterprise.

Should a responsible participation in the management

(2) The owner or, in the case of body or bodies corporate the legal representatives, can commission such persons as their deputies who ~~are joint managers~~ of the enterprise; this will be necessary, if they themselves are not concerned with the management of the enterprise. In unimportant matters they can commission other persons.

(3) If the manager of the enterprise, pursuant to article 36 and by a court of honor, is legally declared unfit to be a manager, a new manager of the enterprise shall be appointed....."

- SCHNEIDER Exh. 35, Book IX -

- compare also statements WEISS, German transcript, pages 7689 et seqq., English, pages 7620 et seqq. -

The basis of the National Socialist labor legislation was the works ~~combine~~, i.e. the plant with its leader and its ~~employees~~ *staff*, as may be seen from the excerpt from the commentary to the AOG by HUECK,

NIPPERDEY and DIETZ:

Community

" II. The works ~~combine~~ *community*.

1. The works ~~combine~~, i.e. the community of all those working in the enterprise, will be the focal point of all legislation pertaining to the regulation of working conditions and related matters. Deliberately diverging from the former prevalent legal state of affairs, which endowed agencies outside the enterprise with a decisive authority, the Law regulating National Labor Relations (AOG) shifts the focal points of all legislation and those pertaining to the regulation of working conditions and related matters and its execution, to the respective enterprises, the individual concern as the nucleus of economy and labor. (Seldte, ZAKdR 1937, p. 613). For in the individual enterprise, by working and living together in it, the community of all employees, irrespective of the type of work they perform is a joint experience. Only by this token, the primary requirements for a true partnership in work and by the work can be attained. The enterprise is not only the smallest but also the initial form of a working community comprising various people. This principal orientation of the

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law, and thus of the German labor constitution, is not affected at all, if, for a prolonged period, a strict regimen guides the social policies and the regulations of wage scales which becomes manifest in the measures of the Reich Trustee, pursuant to the Decree regulating Wage Scales of 23 June 1938, especially viewed in the light of the stupendous tasks with which the German labor- and economic policy is still confronted. (See also Mansfeld German Labor Law, 1929, 118)."

- SCHNEIDER Exh. 35, Book IX -

Thereby the significance of the individual plant with its leader working there was increased and the significance of the more capitalistic employer weakened, which was in accordance with the tendency of .

National Socialism. In conformity with that an employer or a legal representative, who did not take an active part in his business, for instance, the Vorstand of a limited company, had to appoint a special Fuehrer des Betriebes, who did work there.

Hence: the primary responsibility of the Betriebsfuehrer working at the plant leads to the secondary or indirect responsibility of the employer alien to the plant who, in the case of corporate enterprises, is represented by the legal representative. Apart from that he could appoint a Fuehrer des Unternehmens in accordance with article 17 of the AOG, if the enterprise consisted of several plants, as in the case of the IG. This had to be done if he did not personally manage the business (see article 3 above). This Fuehrer des Unternehmens represented the employer and therefore was only indirectly responsible. This regulation is perfectly sensible, as in the case of plants situated far apart the employer or legal representative could not carry the direct and primary responsibility.

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The selection of plant managers for the individual works of the I.G. - as no doubt in all large enterprises - was made by the Vorstand as the legal representative and entrepreneur, because the Betriebsfuehrer had to be eligible for the position not only from the social, but also from the human and professional aspect. The Prosecution claims in its opening statement, transcript German page 160, English page 97, that SCHNEIDER as the Hauptbetriebsfuehrer, namely the leader of the enterprise for the entire I.G., shaped its policy by issuing the directives; the inaccuracy of this assertion is proved as follows:

Due to his solely indirect responsibility for plants not directed by himself, this competence of the entrepreneur or the Unternehmensfuehrer is on principle limited to matters concerning several plants, insofar as he has reserved his decision. The witness WEISS states the following in this connection:

"In the national socialist labor legislation, the emphasis of social welfare policy was put on the individual plant. Therefore, the emphasis in carrying out social welfare work also rested with the plant leaders of the individual plants. These people were responsible to their workers when making social welfare decisions and also to the agencies of the state and of the Party in their own district. The responsibility of the main plant leader consisted only in those fields which touched several plants simultaneously. Apart from that, the main plant leader had to reserve the right of deciding such questions for himself. Only in such a case could he instruct the local plant leaders and give them directives."

-German transcript page 7690, English transcript page 7620-21 -

Reference should furthermore be made to the affidavit WEISS, SCHNEIDER Exhibit 36, Book IX, No. 7, and para. 5 of the 17th carrying-out order, which reads as follows:

"Tasks, joint plant regulations.

(1) The Employees' Advisory Council (Unternehmensbeirat) will be called in for consultation, particularly if such measures are concerned as mentioned in article 6, paragraph 2 of the Law regulating National Labor Relations, insofar as the owner

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or the manager of the enterprise has reserved the right for himself to pass decisions for all or several plants which are ~~eligible~~ to have ~~shop-stewards~~ councils (Vertrauensrat)."

bound 35 confidential
-SCHNEIDER Exh. 233, Book IX-

In the I.G. this had, both prior to and during the time when SCHNEIDER held this position, taken the form of the Betriebsfuehrer, or the Hauptbetriebsfuehrer, giving directives insofar as they concerned questions of a so-called works policy, i.e. social policy emanating from and introduced by the plant. Over and above the ~~Joint~~ ^{Overall} Plant Regulations, applicable to all concerns, these for instance included the annual premiums of the I.G., the construction of dwellings by the I.G., questions relating to technical training and the I.G.'s own special Old Age Maintenance Scheme.

-Statement SCHNEIDER, German transcript page 7461, English page 7395-

-Statement WEISS " 7700, " 7632-

-Affidavit WEISS, SCHNEIDER Exh. 36, No. 7 with illustration, Book IX-
No general directives were,

/however, issued by either Dr. SCHNEIDER or his predecessor within the spheres of government-~~sociology~~ ^{social policy}, such as for instance National Social Insurance (sickness-, old age- and accident insurance), the regulation of wages and the allocation of labor, i.e. particularly the ~~utiliza-~~ ^{engagement} ~~tion~~ of labor. In this connection their activity was limited to an exchange of experiences and an endeavor to establish uniform procedure with regard to measures taken in doubtful cases, i.e. a certain coordination.

-Affidavit WEISS, SCHNEIDER Exh. 36, figure 6 and 7 with illustration, Book IX-

-Statement WEISS, German transcript page 7689-7700, English page 7630-31-

-Statement SCHNEIDER, German transcript page 7462, English page 7396-

The reason for this is that already before and particularly during the war, general matters within the spheres of government-~~sociology~~ ^{social policy} - thus specially in connection with the regulation of wages, the procurement of labor - were settled and directed by the central government authorities, as is clearly revealed in the SCHNEIDER Document Books III and IV; ^{the} special cases on a regional level which were not clarified by the central government authorities themselves and which

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resulted from the various economic conditions in the districts with reference to the regulation of wages and prices etc. and from the various production branches of the enterprises, were also settled and decided by the regional, district and local labor authorities. The same also applied during the war to the housing and alimentation in the camps.

-Affidavit SCHMID, SCHNEIDER Exh. 239, supplementary Doc. Book II-
The authority remaining to the I.G. in these spheres depended entirely on the local and specific conditions in the individual plants and their manpower and therefore decisions within the I.G. could not be reached centrally by the Unternehmensfuehrer, but only by the local Betriebsfuehrer. Thus it is impossible for the Hauptbetriebsfuehrer to have shaped the policy. Only a certain exchange of experience was feasible. This was also in conformance with the tradition and with the "de-centralized centralization" of the I.G. which was justified in view of the size of the enterprise and its many leading and highly qualified employees.

-Affidavit WEISS, SCHNEIDER Exh. 36, figure 7, Book IX-
(also statement WEISS, transcript page 7700-01 (German), page 7694-96 (English)-

-Statement SCHNEIDER, transcript page 7462-63 (German), page 7396-97 English
7538 7476-77-

The obscure and too far-reaching statements of the defendants SCHNEIDER and LAUTENSCHLAGER in the Pros. Exh. 394, figure 3 and 1328, figure 4, Book 68, concerning the legal competence of SCHNEIDER and the other Betriebsfuehrer are rebutted by the above statements and the corroborating evidence; neither could the latter, as non-jurists, be expected to explain and conclusively judge these questions, quite apart from the manner in which the interrogations, especially SCHNEIDER's, were conducted, as was described by the latter.

-Transcript page 7469 (German), page 7403 (English) -

(The above-mentioned Prosecution Exhibits will be dealt with in detail later, under e).

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In the approximately 50 plants of the IG, exchange of experience and co-ordination was effected in the Betriebsfuehrer-conferences, the meetings of the Unternehmensbeiräte (Employees' Advisory Councils) and the TEI, (Technical Committee), which mainly represented the Betriebsfuehrer, on the occasion of SCHNEIDER's journeys, by reports in the above mentioned bodies, ^{the financial control} for instance in connection with the construction of the huts and on hand of the statistics compiled by Bertram's office on which the diagrams concerning personnel (Gefolgschaftsschaubilder) - submitted by the Prosecution - were based. Dr. RODENACKER's order concerning the current health examinations of the IG personnel, including foreigners, also constituted a measure of this type. The correct selection of Betriebsfuehrer, as described by SCHNEIDER for Launa in his interrogation, was furthermore of importance. All this was done in accordance with the traditional ^{social policy} ~~sociology~~ of the IG, the merits of which have been established in numerous documents.

- Aff. Weiss, Schneider-Exh. 36, figure 6 and 7 Book IX -
- Aff. Weiss, Schneider-Exh. 37, Book IX -
- Statement Weiss, transcript page 7702 (German), page 7633 (English) -
- Aff. Dr. Rodenacker, Schneider-Exh. 38, Book IX -
- Statement Schneider, transcript page 7477 (German), page 7413 (English) -
- Statement Keding, transcript page 7654 (German), page 7587-88 (English) -
- Aff. Ministerialdirektor Dr. Reuss, Schneider-Exh. 44, Book IX # 279 -

Dr. Reuss states the following in this connection:

[social policy] "From this as well as from the occasional reading of ^{social political} ~~sociological~~ publications of I.G. Farben, I personally gained the impression that of the large plants in Germany, I.G. Farben had the most progressive leadership in the field of ~~sociology~~. I know that occasionally, owing to I.G. Farben's pro-labor social policy, ^{social political} ~~sociological~~ differences of opinion arose between the representatives of I.G. Farben and representatives of other industries in the committee meetings of the Reich Group Industry. On these occasions I.G. Farben was accused of meeting labor's demands more than half-way with their measures, and thereby with jeopardizing the interests of the other industries. I.G. Farben's ^{social political} ~~sociological~~ leaning and progressiveness, above all in the field of industrial old-age, housing and health benefits, was generally recognized and served as the model."

SCHNEIDER's only indirect competence - as leader of the enterprise - for the social concerns of the IG as a whole as described above

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is not affected by his position as a member of the Vorstand or by the special tasks which were assigned to him in this capacity and which had no direct connection with social or personnel questions; for instance his position as chief of Sparte I and as member of TEA for technical questions as such, because in this respect SCHNEIDER was only a member of the Vorstand with special tasks which, however, ~~had no bearing on sociology and the~~ *were not connected with social policy* Labor Law. Therefore he and the other members of the Vorstand only represented the entrepreneur of the IG, who, according to the above statements, like the ~~director~~ *leader* of the enterprise, was only indirectly responsible pursuant to the Labor Law governing personnel matters, thus in particular for the proper selection of plant leaders and their employment. That the correct procedure was followed is shown in the entire evidence submitted; individual instances will be referred to again below.

(To the Trial Brief of the Prosecution, part III, VI:)

The Fuersten mine and the Janina mine did not belong to the Konzern of the IG as an enterprise ~~and sociologically~~ *or under social law*, as was shown in the Prosecution's own diagram in volume 68 and in the statement of the witness Falkenhahn.

- Transcript page 4396 (German), page 3370 (English) -

The same applies to the DAG, in connection with which no accusation is made or maintained in these proceedings with reference to count III.

- Transcript page 4595 (German), page 4570 - 71 (English) -

b) Foreign Labor

(Trial Brief of the Prosecution, part III, II D)

As shown in the entire evidence submitted, the IG was unable to fill its *production* government orders during the war without employing foreign labor,

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particularly in view of the constant conscription of the German workers to the Wehrmacht, although the employment of foreigners met the gravest misgivings on the part of the IG for various reasons. With the approval of the authorities and under their supervision, the IG therefore recruited foreigners on a voluntary basis in accordance with the regulations mentioned above under III A, which project was partly also favored by the unemployment - caused by the blockade - in other European countries.

- Statement SCHNEIDER, transcript page 7472 (German), page 7406 (English)

7527 7524
- Statement WEISS " 7702 7633

and for instance Aff. LANDSMANN, SCHNEIDER-Exh. 42, figure 2, Book IX -

(Trial Brief of the Prosecution, part III, II B)

With the increasingly difficult war situation, particularly in 1942, the German government switched to the conscription of foreign workers. As confirmed by the witness STOTHEFANG, this was kept secret as far as possible and became known only gradually.

Transcript page 3753 (German), page 3729-30 (English) -

It has not been proved that the IG already employed deported conscripted foreign labor before 1942. The relevant reliable documents of the Prosecution and the defense all - Poland excepted - originate from the year 1942. As far as the Soviet Union is concerned, the witness STOTHEFANG stated that the first transport of Eastern workers arrived in Germany at the beginning of 1942.

- Statement STOTHEFANG, transcript page 3750 (German), page 3726 (English) -

No evidence has been submitted to the effect that the IG had already employed forced labor from USSR in the years preceding 1942. Nor can this be assumed from the historical point of view, because in

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the last months of 1941 there were severe epidemics in the East, specially typhus, and for this reason even the prisoners of war remained there for the greater part. Furthermore no proof has been furnished that the IG had already employed conscripted Poles at an earlier date and that, if there were isolated cases, the executives, specially SCHNEIDER, knew of them. As SCHNEIDER testified, no Poles at all were employed in Leuna.

- Transcript page 7493 (German), page 7431 (English) -

The Prosecution documents do not prove that the Poles employed by the IG prior to 1942 had been conscripted, they only show that their assignment and their working conditions were ~~controlled~~^{regulated} by the authorities, as was the case with all workers; this, for instance, is also shown in SCHNEIDER-Exh. 200, Book VI, and in the Prosecution documents Exh. 1899 and 1900 from the plant Wolfen - not from Leuna - which were submitted to Dr. SCHNEIDER during his cross-examination. In this connection I make particular reference to Prosecution Exh. 1372, Book 70.

As the witness STOTHEFANG testified, the arrival of Polish workers in Germany was not noted particularly, as many Poles had always worked here and as 30 - 40 000 Polish workers had been expected for 1939/1940.

- Transcript page 3759 - 60 (German), page 3736 - 37 -

These were invariably in larger groups, as is probably always the case wherever less qualified workers of one country are employed in another country.

For all these reasons - specially the government policy of secrecy and also because of existing language difficulties - SCHNEIDER can and must be believed when he declares that he had no knowledge of a conscription as far as the Poles who were transferred to Germany and assigned to the IG prior to 1942 were concerned.

- Statement SCHNEIDER, transcript page 7529 (German), page 7469 (English) -

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(Trial Brief of the Prosecution, Part III, II D).

When in 1942 the German government introduced labor service and labor conscription in the various countries in the East and West, and when the workers affected thereby were transported to Germany, this was as repeatedly stressed accepted by millions of manufacturers and farmers, in view of the very serious situation of the ~~war~~ ^{at that time} and the otherwise insurmountable difficulties in reaching the production target, although many certainly regretted the fate of these foreigners. Also the plants in Germany owned by foreign or neutral companies, employed these workers without hesitation; this was confirmed by the witness WEISS.

-Tr. Germ. p. 7604, Engl. p. 7635-36-

They also, the same as the larger part of the German industry, saw no other possibility and made all efforts, in the same way as the IG, to render the working and living conditions for foreign workers as favorable as possible. Then, from 1942 onwards, it gradually became clear to Schneider and his co-defendants, that the workers were ^{by the labor offices} allocated by way of conscription and transported to Germany, both they and the rest of the German industry realized that in view of the great difficulties in production and the pressure exerted by the government, there was no other possibility - compare Schneider documents in book VI, especially exhibit 202 and following - of excluding themselves from the employment of such workers, without incurring a backlog in their production assignments and as a result of it expose themselves to the charge of sabotage and treason with all its legal and other consequences. Therefore they certainly discussed these matters.

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but naturally did not reach any decision, because this matter, just as the direction of labor in general, was entirely in the hands of the authorities and the individual businessman was not in the position to act freely. This becomes evident from the -Schneider documents in vol. III, especially exhibits 121-133 and for instance

-Testimony Schneider	Tr. Germ. p. 7464,	Engl. p. 7398,
"	" " 7480	" " 7416
Testimony Weiss	" " 7702	" " 7633-

This apparently is also the conviction of the Allied Military Governments, as millions of German industrialists and farmers and even many officials of the administration of the labor allocation are again employed, some of them in responsible positions.

Insofar as former IG employees, by order of the General Plenipotentiary Chemistry, had anything to do with the labor conscription of foreign workers, it was only done in order to secure suitable occupation for the various skilled workers, which definitely was very much in the interest of the workers themselves.

-Testimony Schneider, tr. Germ. p. 7578, Engl. p. 7516-

It is precisely the Prosecution documents which prove that ^{unsuitable} the placing or rather ~~the~~ employment of foreigners was considered as one of the main hardships.

-Prosecution Exh. 1302, figure 3/1303, Book 67-

But he who tries to render conditions more agreeable in a situation which was created by someone else, surely does not commit any wrong. Even the inmate-officials of concentration camps, who carried out the instructions of the SS, are not only enjoying their freedom, but are respected, if they did so as far as possible in the interest of their co-inmates. Furthermore, I should like to mention, in this connection, that the Prosecution documents in book 67 refer to official documents, which were no doubt secret and highly confidential, and of which the industry, for instance, the IG,

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certainly had no knowledge. But these documents prove that the situation of the foreigners abroad and at foreign places of work was a very difficult one, whilst industry and agriculture in the Reich tried their best to render their life bearable.

*Prosecution Exh. 1291, Germ. p. 29, Engl. p. 24/1303, Germ. p. 141, Engl. p. 83 and following.

The entire presentation of evidence will have shown the court that the IG made successful efforts to render the living conditions of foreign voluntary and conscripted workers as favorable as possible. The IG acted along the lines of their old social-political tradition, which also benefitted a large part of the foreigners; nor did they shun investing considerable sums for this purpose. Regarding this subject I refer to the testimony and affidavit of WEISS.

-tr. Germ. p. 7705 and following- *Engl. p. 7636 and following*
Schneider Exh. 37, Book IX, especially beginning p. 55-

It was especially due to the expenditure for the building of the barracks and the necessarily reduced output of work by foreign laborers, that these foreign workers were considerably more expensive than the German workers, as can be seen from the above-mentioned evidence and from

-Affidavit Hoffmann, Schneider-Exh. 238, supplementary Book II-

In 1943 the IG spent 41 mill. Reichsmark on living barracks alone, and the entire expenditure of the IG for social purposes, which amounted to roughly 12 mill. Reichsmark in 1935, increased to over 260 mill. Reichsmark in 1943, that is at a time when the appreciably larger part of the employees were foreigners.

-Affidavit Weiss, Schneider-Exh. 37, Book IX, p. 61 and following-
Furthermore Schneider and the IG continually made efforts to improve conditions for Eastern workers, as has been confirmed for instance by the following witnesses:

-Testimony Weiss, tr. Germ. p. 7712, Engl. p. 7642,

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Testimony Giesen, tr. Germ. p. 7594, Engl. p. 7633-

Occasional irregularities, of which Schneider was informed, he investigated and saw to it that they were amended.

-Testimony Krauch, tr. Germ. p. 5233, Engl. p. 5204, together with Prosecution Exh. 1372, book 67 (Schkopau and Heydebreck)-

Moreover it becomes evident from affidavit Rodenacker that the state of health of the entire IG staff including foreigners was very favorable due to the efficient welfare measures, and it must be stressed that the foreigners were, in this respect, treated in exactly the same way as the Germans.

-Affidavit Rodenacker, Schneider Exh. 38, Book IX

- " Krafft, " " 240, Supplementary Book II-

-Testimony Weiss, tr. Germ. p. 7709, Engl. p. 7639-

The consequences of the aerial warfare of course affected foreigners and Germans alike, although SCHNEIDER for instance did everything in his power in Leuna to alleviate those consequences.

for instance - Testimony Giesen, tr. Germ. p. 7597, Engl. p. 7533

Testimony Kaeding tr. Germ. p. 7655, Engl. p. 7586-

The injustice of the assertion with regard to the overcrowding of the barracks prior to the serious results of the subsequent bombing attacks, is most clearly shown in Prosecution Exh. 273, vol. 9, according to which 107 000 of the 131 000 beds in the camps were occupied in February 1943. Complications which arose as a result of the rapid deterioration of the war situation, cannot possibly incriminate the defendants. In this connection it must be taken into consideration that the railroad, postal and telegraphic communications and even transportation by car became increasingly difficult and slower and were dependent on official authorization, which was difficult to obtain. This for instance also explains the fact that Dr. SCHNEIDER did not know anything about a Russian in Leuna, Bitterfeld, being punished by hanging during the last winter of the war.

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-Testimony Schneider, tr. Germ. p. 7534, Engl. p. 7473-

Unfortunately such punishment was not infrequently carried out to both Germans and foreigners during the last months of the war, particularly by the SS. These executions, however, were merely to serve as a warning in the particular locality and were kept secret beyond the area of the particular town. Therefore one was afraid to pass on such information through news channels which were fully censored.

e). Prisoners of war.

(Trial Brief of the Prosecution, part III, IIC)

The employment and treatment of prisoners of war is the responsibility of the government concerned, according to international law, as under article 4 of the Hague Convention relating to Land Warfare and article 2 of the Geneva Convention. Thus the German authorities also dealt with all aspects of these questions, for instance also regarding Russian prisoners of war.

-Defense Exh. 35-44, Book F-

Testimony Miloh, Tr. Germ. p. 5365, Engl. p. 5337

" Schneider, tr. Germ. p. 7467, Engl. p. 7401

With regard to the attitude of the German government towards Russian prisoners of war, reference is made to the basic statements mentioned above under III A 2 a).

As the prisoners of war were completely controlled by the authorities, the employment of prisoners of war was a matter arranged solely between the individual plant and the relevant authority; the individual prisoner had nothing to do with it. Therefore von HUECK's, NIPPERDEY's and DIETZ' comment on the AOG (Law for the Regulation of National Labor) reads as follows:

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"The following do not belong to the staff:

h) *Between* Controlled workers, criminal prisoners, prisoners of war, reform school inmates, even if they are employed in a private enterprise outside the institution. As it is, the agreement concerning their employment is not concluded ~~by~~ them and the employer, but ~~by~~ the employer and the institution.
(See also RVA Arb. RSam. 21, 28)....

-Schneider Exh. 35, Book IX-

Therefore, according to German law the authorities and not the individual plantleader was responsible for the employment and treatment of prisoners of war, apart, of course, from the treatment at the place of work itself. The commentators in question already expressed this opinion in the 2nd edition published before the war.

Accordingly, the Flick-Judgment also supported the view that the

individual industrialist and plant-leader had of necessity to obey the government regarding the employment of prisoners of war, *finding himself in this respect in a case of necessity.*

-Judgment in Case 5 Germ. ... 10728 and following, Engl. p. 1098d and following-

The documents submitted by Mr. BOETTCHER, attorney, show moreover, that the ban imposed by international law on the employment of prisoners of war is only applicable in a narrow sense and even considers their employment at the building of fortifications in the hinterland as admissible. The same applies to industry, except in the case of arms, munition and war materials, which are closely connected with military operations.

-Defense Exh. 28-32, Book F-

Therefore the fact that the German Wehrmacht in principle gave orders for the employment of PWs in the chemical industry was not a breach of international law, as these chemical products were neither connected with military operations nor did they constitute arms or munition. Insofar as there may have been some doubt concerning certain lines of production, these related to secret

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plants where foreigners and prisoners of war were not employed.

- Testimony Giesen tr. German p. 7599 and following, Engl. p. 7536 and following
- Testimony Kaeding Tr. Germ. p. 7658 and following, Engl. p. 7591 and following-

The evidence has not proved that SCHNEIDER violated international law by employing prisoners of war. Neither has it proved that he had knowledge of such a violation within the IG, quite apart from the fact that in accordance with the above-mentioned facts, he cannot be held responsible for it.

- Testimony Schneider, tr. Germ. p. 7467, Engl. p. 7401
" " " 7474 " " 7403

It should also be mentioned that the Prosecution did not submit any report of the International Red Cross or of any protective power to substantiate their assertion, although it would surely have been just as easy for the Prosecution to do so as for Defense Counsel Dr. KRANZBUHLER in the Flick case, who submitted such a report as evidence for his viewpoint.

d) Concentration camp-inmates.

(Trial Brief of the Prosecution Part III, V B)

The concentration camp-inmates in Auschwitz were employed upon orders by superior authorities.

- Prosecution Exh. 1417, Book 72-

Therefore the Technical Committee was merely able to note this fact, as SCHNEIDER testified.

- Testimony Schneider tr. Germ. p. 7467, Engl. p. 7401-

The evidence has shown that the IG was not very anxious to employ these inmates. But it had to submit to circumstances in the same way as many other industrial firms.

- Testimony Milch, tr. Germ. p. 5356, Engl. p. 5336-37

compare for instance Prosecution Document Book 82 German p. 13 and following, 30 and following (for argumentation)

KOGON: SS-Statt, p. 216 and following.

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Besides, the defendants were absolutely justified in believing that in case of employment in industry the internees would be better off.

e.g. - Statement Schneider, Germ. tr. p. 7467, Engl. p. 7402-

This assumption on the part of the defendants was in agreement with every experience made under the National Socialist regime, which from state political egotism alone afforded better treatment to each productive worker and for propaganda reasons attached great importance to the fact that ^{inmates} ~~internees~~ who had contact with the population lived under bearable conditions. This assumption of Schneider and his co-defendants is also confirmed by Schlieber's report to Speer dated 7 May 1944 which was not made ad usum delphini, but which was based directly on conditions prevailing at the time; it reads (page 100) as follows:

"Thanks to the food that our works managers always again manage to provide, difficulties notwithstanding, and thanks to the generally decent and human treatment given also to foreign and concentration camp workers, both Jewesses and KZ-inmates are doing a good job and do everything in order not to be sent back to concentration camps. These facts should really induce us to transfer even more concentration camp inmates to the armament industry."

-Schneider-Exh. 72, Book X-
is

The same/revealed in the book of the former concentration camp inmate and writer HOGON, which contains the following passage:

"If therefore in the following the average conditions of the German concentration camps are described, one always has to take into account that undulating development: subnormally bad during the time of construction - somewhat consolidated during the following years - almost disastrous during the first half year of the war - relative improvement in the following years of the war (a fact which was connected with the increasing value of manpower for war production)....

-Schneider Document 130, Ident. No. 71, Book X-

The expert opinion given by father PRIBILLA who is well acquainted with these matters from own experience and that of other members of the order, runs along the same lines,

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-Schneider-Exh. 231, Book VII, page 68-

and with regard to PRIBILLA's ~~competence~~ *competence*

-Schneider-Exh. 244, supplementary Book II-

It is furthermore incorrect that during a war and under its exigencies and perils the detention without a warrant as such is criminal. It is probably customary in almost all the belligerent countries for reasons of state security. The German supreme court established this as early as 1921.

-Schneider-Exh. 62, Book X-

The fact that the ~~detainees~~ *inmates* had to work during the last war does not alter this opinion. During a period when every free man had to submit to compulsory labor and to the severest encroachments, it is but natural that ~~detainees~~ *inmates* also had to work. The question of remuneration is also insofar of no significance. For even the anti-slavery-agreement in article 5 according to the wording of paragraph 1 and contrary to that of paragraph 2, permits public compulsory labor also without remuneration and with change of domicile.

-Schneider-Exh. 83, Book I-

Here the ~~detainees~~ *inmates*, however, were working on war-essential constructions for the SS and the Reich, with the latter also collecting the greater part of the payments made by the industry for the work performed by the detainees; this proves the public purpose of the work. The evidence has shown that for being assigned the ~~detainees~~ *inmates*, the IG had to make considerable payments in proportion to their performance.

-Statement POHL, Germ. tr. p. 4221, Engl. p. 4191-

The industry of course did not know whether or what percentage of that sum was paid to the ~~detainees~~ *inmates*, because conditions

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in concentration camps and the details of their administration were kept strictly secret.

- Hoerlein-Exh. 78-86, Book IV
- Schneider-Exh. 243 and 245, Supplementary Book II
- Schneider-Exh. 68 and 69, Book X
- Schneider-Document 130, Ident. No. 71, Book V-

The witnesses for the defendant DUERRFELD furthermore repeatedly confirmed that the IG paid additional bonuses to the ~~detainees~~ ^{inmates}. Moreover, the proportionate amounts paid by the justice authorities during and also prior to the Third Reich to convicts for their work, were practically insignificant. Thus they received RM 0.25 in 1923 - i.e. when the inflation was at its peak and when the Mark was devalued - which means practically nothing. The justice authorities, however, received considerable payments from the entrepreneurs.

- Schneider-Document 147, Ident. No. 66, Book X-
- Schneider-Exh. 241, Supplement Book II, page 21-

With regard to the employment of concentration camp detainees, the IG as well as other enterprises were confronted with regulations of government authorities and force majeure i.e. a state of ~~emergency~~ ^{necessity}.
-Judgment Case 5, Germ. tr. p. 10728, Engl. p. 10986-

Whenever particularly favorable circumstances made it possible - for instance the suddenness of the measure - the IG evaded the employment of concentration camp inmates e.g. - aff. LANDSMANN, Schneider-Exh. 42, Book IX at the end and figure 31 -

The concentration camp inmates amounted to only 2½ % of the total workers of the IG

- Statement Weiss, Germ. tr. p. 7713, Engl. p. 7643 -

As has been proved by the entire evidence, the SS was ~~totally in~~ ^{were entirely subordinated} charge of the concentration camp inmates ~~in the camps and exercised~~ ^{to the SS within the camps and, to a large extent, also outside} considerable authority over prisoners ~~outside the camps~~. Therefore ^{the camps} they did not belong to the ~~personnel~~ ^{staff}

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of the plant or enterprise in the sense of the (AO) Law for the Regulation of National Labor as is apparent from the quotation on page 96 which expressly mentions also ^{inmates.} ~~detainees.~~

-Schneider-Exh. 35, Book IX-

The questions in connection with Auschwitz will be referred to later on in accordance with the structure of the indictment.

e) Special Prosecution Documents.

(Prosecution Exh. 2250, Book 94 - Rebuttal)

SCHNEIDER gave detailed information about the manner in which his affidavits were drawn up during long interrogations at night, without any documents, and concerning ^{the} errors he had made.

-Germ. tr. p. 7469 etc. Engl. pages 7403 etc. -

With regard to the above rebuttal document, special reference is made to the following passage, the full text of which is quoted:

"A. I have to tell how this affidavit was drawn up. As you have already told the Tribunal, apart from several interrogations lasting a short time, I was interrogated especially on 27 and 28 March 1947, beginning at a quarter to six in the afternoon until a quarter past one in the morning, seven and a half hours uninterruptedly, by two interrogators. The record of this interrogation comprised approximately 120 pages and was shown to me at another night interrogation on April 1947, which interrogation also lasted five and a half hours. I had to look it through, and I signed it.

In the course of these interrogations a large number of questions were fired at me without interruption, dealing with the social-welfare problem of Farben. It was not possible for me to answer these questions adequately from my own knowledge, since they were, to a large extent, handled by department chiefs and plant leaders. I did not have any documents at my disposal. Moreover, my memory was not very good. Furthermore, many legal problems were brought up that I really could not judge thoroughly. When I pointed all this out, I was charged with being untruthful and was threatened with being taken away.

The questions were, to a large extent, leading. In the consciousness of a correct and just attitude in social-welfare questions and the same attitude on the part of my colleagues and the Farben plant leaders, I was put into an excited condition in the course of the long interrogation. Also, I was unbearably exhausted because of the length and the nature of these night interrogations.

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'I believed, however, that I could not refuse to testify, since I knew that I had to testify because of the laws of the Military Government,

The affidavits were drawn up in this way: They were dictated by the Prosecution and submitted to me for signature. Since, as I said, I was not able to recall the circumstances very well, and since I could not judge the legal questions authoritatively, I did not see how I could argue most of the things asked, and I signed them."

This confirms, also in the sense of the rebuttal document, the correctness of Schneider's description. He never denied that certain possibilities for corrections - which were also apparent from the Prosecution documents submitted so far - existed when the affidavits were drawn up. However, the defense documents and Schneider's examination prove beyond doubt that in his affidavits he often made errors with regard to details and above all in connection with legal questions and particularly, that he was unable to give the complete information. In his position, which comprised such a large field of tasks, it was furthermore quite impossible for him to give information on so many matters without documents and without making inquiries. For this reason he considered it expedient - judging from the character of his first examination - to defer his corrections until the doubtful questions were cleared up and until he was to take the witness-stand in court. As shown in the enclosure to the Rebuttal Document, he therefore, before the indictment was served, corrected his affidavits in a conscientious manner only insofar as he was able to form some picture of these matters after consulting his co-defendants.

The enclosure to the rebuttal-document proves furthermore that the interrogations lasted for 7 hours, beginning in the evening.

The documents of the Prosecution or of the prison must show at any rate that he was brought in for the interrogation already before 1800 hours. Besides, SCHNEIDER was aware of his obligation to make a statement according to the military laws which had been promulgated in Germany already prior to his arrest.

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This alone induced him to make a statement under such difficult circumstances.

(Prosecution-Exh. 1328, Book 68, aff. SCHNEIDER)

Ad paragraph 5)-6) of this affidavit - figure 2) will be dealt with under Leuna - reference is made to the above statements concerning this part under a) Responsibility of Schneider as Hauptbetriebsfuehrer and to the statements Schneider made in his direct examination.

-German tr. p. 7470, Engl. 7404-

Ad paragraph 7) and 8) regarding forced labor, reference is also made to the above explanations given under a) and b) of this part. The discrepancies and errors in his affidavit were corrected by Schneider in his direct examination.

-Germ. tr. p. 7470, Engl. p. 7404-

The leave for foreigners was established by the authorities;

-Schneider Exh. 147-152, Book IV-

however, competent offices frequently suspended it for political and military reasons.

e.g. Pros. Exh. 1372, Book 70-

-statement Schneider, Germ. tr. pages 7470-71, Engl. 7404-05

- " Weiss, " " " 7410, " 7640-

Moreover, leave was not granted arbitrarily by the plant manager, but after due deliberation and in accordance with the regulations. Ad paragraph 10) and 11) in which the tasks of the office Bertram are dealt with, reference is made to Schneider's direct examination.

-Germ. tr. p. 7472, Engl. p. 7406-

As to both, paragraph 12) and the

-Prosecution Exh. 1330, Book 68,

(Trial Brief of the Prosecution, part III, II D)

concerning the procurement of foreign labor,

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reference is made to the above statements made in this section under b) "Foreign Labor". There it is explained and proved that the activity of the IG was limited to the enlistment of foreigners only.

-Statement Schneider 7472, Engl. tr. p. 7406-

The correspondence in Pros.-Exhibit 1326, Book 68, was not based on the own initiative of Office Bertram, it only concerns information required by a higher authority on the allocation of manpower. The expression "to comb out" ("auskaemmen") is also taken from official-military terminology.

-Affidavit Bertram, Schneider Exh. 39, Book IX-

-Schneider Exh. 127a, Book III, p. 47-

Besides, it has in no way been proved that the contents of Dr. BERTRAM's letter dated 10 March 1943, became known to Schneider.

-Statement Schneider, Germ. tr. p. 7472, Engl. p. 7407-

Ad article 13), Schneider corrected and explained his partly erroneous statements regarding the employment of children.

Children over 12 years of age, especially of Eastern refugee families, were employed by the IG - after the respective protective provisions had been repeated as early as the beginning of the war - only in rare cases in the easiest work and for short terms in accordance with new regulations, ^{and} ~~namely~~ only towards the end of the war, in order to prevent them from roving about the streets and so as to avert the detrimental consequences at such times. The error made by SCHNEIDER with regard to their age is due to the leading questions put to him by the interrogator.

-Schneider-Exh. 145 and 146, Book IV-

-Aff. Bertram, Schneider-Exh. 39, Book IX, cipher 4-

-Statement Schneider, Germ. tr. p. 7443, Engl. p. 7373-

" " " 7493 " " 7432-

Statement Weiss " " " 7711 " " 7641-

The evidence has furthermore proved that the IG

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had established schools and Kindergarten in many plants,
(aff. Rudloff, Schneider Exh. 53, Book X with enclosure)-
although this was certainly very difficult for the most varied
reasons during the war, when even German children were frequently
unable to attend school during the period of air-attacks and con-
sequently were engaged in other activities in accordance with
regulations. Moreover, light and short-term employment of children
above the age of 12 does not under such circumstances constitute
a violation of the laws of humanity and is still in practice in
many countries and was permitted even in times of peace. ^{x)}

It is not without importance in this respect that the hygienic
conditions in the chemical large-scale industry - including the
IG- are good.

-Statement Schneider, Germ. tr. p. 7578, Engl. p. 7515
in his cross examination, Germ. tr. p. 7540, Engl. p. 7478-
-Statement KAEDING, Germ. tr. p. 7654, Engl. p. 7587-

Ad paragraph 14) reference is made to the above statements under

c) "Prisoners of war". The terms "direct and indirect armament
industry" are alien to the usage of the German language. Here the
words "preliminary production" and "final production" are used. In
the chemical industry it always is preliminary production, so that the
employment of POWs here is permissible in principle. The

-Defense Exhibits 28-32, Book P-

show that the text of the Hague Land Warfare Regulation and of the
Geneva convention - the titles of which were incorrectly used
even by the Prosecution in the A drafts of the affidavits - could not
have enlightened Schneider as a non-jurist, on the position according
to international law. In this respect he could and had to rely
on the authorities.

-Statement Schneider, Germ. tr. p. 7474, Engl. p. 7408-

x) compare for instance the German law concerning the protection of ~~the~~ youth
young of 30 April 1932- Reich Law Gazette, part I, 734, art. 5.

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With regard to number 15 - health statistics - reference is made to:

- Statement by Krauch, Germ. tr. p. 5233, Engl. tr. p. 5204-
- Statement by Schneider, Germ. tr. p. 7473, Engl. tr. p. 7408
- Affidavit by Rodenacker, Schneider Exh. 38, Book II-
- Prosecution Exh. 1332, Book 68-

In the case of conditions detrimental to health, the IG tried to remedy matters as far as possible. Dr. SCHNEIDER had exact surveys and inspections made of the state of health of the entire IG staff, including the foreigners, and also had the relevant reports, submitted to him with regard to foreigners.

As number 16, the witness WEISS has stated with regard to the employment of concentration camp inmates, that inmates of concentration camps were employed in only 3 plants of the IG and that their number totalled 2% of the staff; Heydebreck, Bitterfeld and Leuna - as has been stated by SCHNEIDER - did not employ inmates of concentration camps.

- Germ. tr. p. 7713, Engl. tr. p. 7064-
- Statement by Schneider, Germ. tr. p. 7474, Engl. tr. p. 7410-

It was therefore not "customary", i.e. not usual, for the IG to employ inmates of concentration camps, quite apart from the fact that their employment was carried out ^{upon} by official orders.

With regard to number 17) - reporting of foreigners to the authorities and Gestapo - it must be said that as far as possible the IG tried to avoid the reporting of foreign workers to the Gestapo although the relevant regulations were rather severe, a fact which will be discussed later.

- | | | |
|-------------------------|--------------------|----------------------|
| -Statement by Schneider | Germ. tr. p. 7475, | Engl. tr. p. 7409 |
| " | 7488 | 7424 7424 |
| " | 7493 | 7432 |
| Statement by Weiss, | " 7714 | 7644 |

and the official regulations in Schneider Document Book VI, in particular Exhs. 193-198-

With regard to number 18), Schneider has pointed out that the transfer of the foreign workers to Germany was carried out by officials of the IG, and not by

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the Works's Security Police; this was done in the interest of the foreign workers, in order to bring them to the work safely and at the right time, and under good conditions.

-Statement by Schneider, Germ. tr. p.7475, Engl. tr. pp 7410-11 and e.g. -Affidavit by Landsmann, Schneider Exh. 42, number 2, Book IX, p. 87 et seqq. in particular p. 90-

By this procedure, incidents were avoided such as those, for the occurrence of which Schneider was blamed by the Prosecution according to the wording of number 10 of his affidavit in Prosecution Doc. Book 69, Exh. 1333. There a group of foreign workers had arrived unexpectedly and could only be accommodated provisionally in tents which, however, was better than no accommodation at all.

-Statement by Schneider, Germ. tr. p. 7494, Engl. tr. p. 7432-33- (Pros. Exh. 1329, Book 68)

With regard to this affidavit which deals with the jurisdiction concerning social questions, Schneider has on the whole only rectified some statements about the other defendants.

-Germ. tr. p. 7468, Engl. tr. p. 7402.

(Pros. Exh. 1350, Book 69)

If, on p. 21 of the Trial Brief, part III, of the Prosecution, it is said:

"There is unanimous agreement that in spite of many difficulties and in spite of the average inadequacy of the work obtained from foreign and compulsory labor, it will not be possible to dispense with them in the future either. Satisfaction is expressed generally that cooperation with the authorities and the German Labor Front in this sphere is favorable."

it must then be noted that in Document Book 69, Germ. p. 103, Engl. p. 78, it is said:

"There is unanimous agreement that in spite of many difficulties and in spite of the average inadequacy of the work obtained from foreign workers and from those liable for compulsory service, it will not be possible to dispense with them in the future either. Satisfaction

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is expressed generally that the cooperation with the authorities and the German Labor Front in this sphere is favorable." (Underlined by ms.)

The quotation in the trial brief from this document is, therefore wrong. Whereas it could be deduced from the wrong quotation that the foreigners represented forced labor, the same deduction does not follow from the right wording; for the labor forces mentioned in the minutes of the meeting on 11 March 1941 as "liable ^{to} ~~for~~ compulsory service" were Germans whose output generally speaking was not so very good either.

(Pros. Exh. 394, Book 68)

The statements sub number 3) of this document have been refuted by the above statements sub a) "Schneider's responsibility as Hauptbetriebsfuehrer". Particular reference is made to the affidavit by Weiss

-Schneider Exh. 36, Book IX -

(Pros. Exhs. 1899 and 1900, Book 70)

These have been dealt with above on page 76. They only show that the living and working conditions of the Poles were in Germany subject to official regulations, in the same way as all other labor forces. They do not show that these workers were forced labor. As far as the evidence submitted by the Prosecution refers to individual plants, it will be dealt with in relation to those defendants who were primarily active in and responsible for them, i.e. in particular the directly responsible Betriebsfuehrer.

f) Conclusion.

In conclusion it must be said that the whole evidence proves that generally speaking the IG did

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their best in order to make the living conditions and the work of the foreign workers, POWs and inmates of concentration camps as tolerable as possible. The IG, just as the rest of the German industry and agriculture, could do nothing against the employment of these groups. It had to yield to the pressure of war, the difficulties arose production requirements, and the laws. Insofar as/towards the end, as the result of the war developments, particularly as the result of air raids, this was inevitable and applied to Germans as well as to foreigners. As far as was possible, SCHNEIDER in particular tried to overcome these difficulties. However, it is impossible to charge him with certain occasional offences in view of the size of the IG, the far-flung geographical dispersion of their factories and the number of their employees. He absolutely fulfilled his indirect responsibility as Hauptbetriebsführer as outlined above sub 1.a) in the great social tradition of the IG. He is therefore in no way guilty of a war crime or a crime against humanity.

2. Leuna

The extraordinary size of this plant has been described by SCHNEIDER as well as by the witness KAEDING. In the end it had about 30 000 employees, 60 dwelling camps and a daily consumption of water equal to that of Berlin.

-Statement by Schneider, Tr. Germ. p. 7476-77, Engl. tr. p. 7412
-Statement Kaeding 7640 7573

As has been rightly stressed by SCHNEIDER, its proper administration presupposed a proper choice of the leading men.

-Statement By Schneider, tr. Germ. p. 7477, Engl. p. 7413.

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The evidence submitted by the Defense and the almost complete lack of incriminating material, proves that SCHNEIDER fulfilled this task in the right manner.

a) Foreign workers.

Leuna, too, had to comply with the employment of foreign workers under the pressure of ~~higher~~ ^{orders} production, and of laws and official regulations.

-Statement by Giesen, tr. G. p. 7593-94, Engl. p. 7530-31
" " Kaeding 7650-51 7583-84
Affidavit by Hanisch, Schneider Exh. 51, p. 21, Book X
" " Polster, " 41, p. 75-76, Book IX
" " Landsmann " 52, p. 89 " IX

Then, however, everything was done in order to make their living and working conditions as good as possible as may be seen from the documents submitted, as well as from the statements by witnesses, such as for instance,

Affidavit Strombeck, Schneider Exh. 48, Book X, p. 8/9
" Hanisch 51 X p. 22/23
" Polster, 41 IX p. 91/92
" Landsmann 42 IX
" Weydanz 52 X p. 37/38
Statement by Giesen, tr. G. p. 7596, E. p. 7655/56
" " Kaeding 7655 7588
Affidavit by Bieringer, Schneider Exh. 81, Suppl. Book I
" " Hoermann 241 " " II

Within the framework of these statements, the photograph of bedrooms, dining-rooms, washing rooms and kitchens, library, kindergarten and theater, submitted with Schneider Document Book, Suppl. vol. II, speak for themselves, esp. through the matter-of-fact character of these pictures which also include one or the other emblems prescribed by the German Labor Front - see above p. 73 - and show a wire-fence around a kitchen or store room. Particularly impressive are statements by foreigners in vol. IX, submitted by Dr. LANDSMANN in his affidavit as contemporary documents. There the declaration of the representatives of the French and Belgian men conscripted for work which runs as follows:

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"I hereby testify that Dr. LINDSELMAN in his capacity as chief of personnel of the Leuna plants has always treated us in a fair way. However we had to suffer from the Nazi regime and its methods, it was always he who stood up for us and helped us wherever he could. We know that he saved several of our fellow-countrymen from condemnation and the concentration camp. This means in effect that he has saved their life."

Exh. 42

- SCHNEIDER-Book X, page 95 -

and the statements by the Yugoslavs Dipl. Ing. ANTON and Dipl. Ing. WASILY and by the Bulgarian GENTSCHOFF. In an affidavit, the last-named also made the following statement:

"During my stay in Leuna social conditions were of a wartime standard but nevertheless good. Accommodation (hut camps) was good and even better than in other plants which I know. There were usually between 8 and 10 men in the rooms; recreation and dining rooms were available. Arrangements were made for transport to the place of work and the works administration took great care to provide numerous buses. The hygienic and sanitary installations were good; every worker had an opportunity to wash himself thorough (shower baths). The food was according to wartime standards and was issued by the plant as so-called feeding of the workers at the plant (Werksverpflegung). The works administration took great care to satisfy the people in this respect. Medical care, given by the well organized dispensary, was also good. In all these things no difference was made between German and foreign workers."

- SCHNEIDER-Exh. 45, Book IX, page 104 -

If the Prosecution submits that these men were collaborators, it must be stated that the signature of the French and Belgian representative has even been testified by an authority of the American Military Government; this would certainly not have been done on 17 May 1945, i.e., about one month after Leuna had been occupied, if the persons in question were suspected of collaboration; such a fact would have been reported to the American authority long before. In this connection it is also of great importance that SCHNEIDER's position as Betriebsfuehrer of Leuna, the largest plant in Central Germany, and vice president of the Halle Chamber of Commerce was confirmed by the American Military Government, which certainly would not have happened

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if conditions in Leuna had been intolerable for foreigners.

- Statement by SCHNEIDER, Transcript German page 7387, English page 7322 -
- SCHNEIDER's fair and sympathetic attitude towards the fate of foreign workers, e.g. ⁱⁿ air-raids, is confirmed with many details by the statement by KAEDING, Transcript/pages 7654/55, English pages 7587/88
- Affidavit by SÄBEL, SCHNEIDER, Exh. 3, page 5 -
- Affidavit by SAUER, " " 4, " 11 -

SCHNEIDER's orders concerning the funerals of foreigners killed in air raids are also typical in this respect.

- Statement by KAEDING, transcript German page 7657, English page 7590 -
- In Leuna, too, equal treatment of foreigners and Germans was a guiding principle.
- Statement by GIESEN, transcript German page 7596, English page 7592 -
 - Affidavit by POLSTER, SCHNEIDER-Exh. 41, Book IX -
 - " " WUSTROW, " " 47, No. 6), Book X -

It is also characteristic in this connection that the losses in foreign and indigenous workers caused by air raids were almost of the same percentage.

- Statement by KAEDING, transcript/page 7655, English page 7588 -
- If some camps were situated near the plant and were therefore destroyed by air raids, then the same applied to many dwellings of the Germans, incl. the works management, since nobody had reckoned with the attacks.

- Statement by KAEDING, transcript German page 7671, English page 7603 for cross-examination see German page 7668, English page 7600 -

Maltreatment of foreigners was forbidden, and was severely punished.

- Statement by GIESEN, transcript/page 7598, English page 7534 -
- Statement by PELNTEK, " " 7600, " " 7611 -
- Affidavit by HANISCH, SCHNEIDER-Exh. 51, Book X, page 23 -

That foreigners agreed with their treatment is proved by the fact that

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at Launa no case of sabotage occurred although this would have been easy.

- Statement by GIESEN, transcript German page 7595, English page 7531 -
- Affidavit by HANISCH, SCHNEIDER-Exh. 51, Book X, page 22 -

With regard to the good medical treatment and health welfare, reference is made in this respect to the above quotation from the affidavit by GENTSCHOFF (see page 124) and further to

- Affidavit by SPELTHAHN, SCHNEIDER-Exh. 57, Book X -
 - " " HEINZE, " " 58, " X, page 59 -
 - " " GENTSCHOFF " " 45, " IX, " 105 -
 - " " SPELTHAHN " " 57, " X, " 54 -

With regard to individual items, reference is made to the following:

Questions of wages and working conditions are mentioned in particular in

- Affidavit by POLSTER, SCHNEIDER-Exh. 41, Book X, page 78 -
- " " WEYDANZ, " " 52, " " 29 et seqq.

With regard to the above quotations ^{pp. 69} ~~68~~ 71 in particular, the following statements and affidavits refer to the feeding and clothing of the foreign workers ^{at Launa} and the special endeavors of the plant in this direction as far as this was possible:

- Statement by GIESEN, transcript German page 7596, English page 7532 -
- Affidavit by SCHOBINGER, SCHNEIDER-Exh. 56, Book X, page 50/53 -
 - " " SPELTHAHN " " 57, " 56 -
 - " " HEINZE " " 58, " 59/60 -
 - " " SABEL " " 3, " VIII, page 5 -
 - " " POLSTER " " 41, " IX, page 80 -
 - " " GENTSCHOFF " " 45, " IX, " 104/05 -
 - " " STRONBECK " " 48, " X, " 8/9 -
 - " " HANISCH " " 51, " X, " 22 -
 - " " HILL " " 54, " X, " 43 -

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The plant's special efforts for the protection of labor are revealed in the pamphlet which contains regulations concerning accidents in several languages:

-Schneider Exh. 46, Book X-

The following witnesses and documents particularly refer to leave, home leave and time off with regard to the foreign workers in Leuna:

-Statement PEANTEK, transcript German page 7678, English page 7610 (leave trains of foreigners),

-Affidavit POLSTER, Schneider Exh. 41, Book IX, page 79/80-

Affidavit STROMBECK, " " 48, " X " 9 -

-Affidavit WEYDANZ, " " 52, " X " 31 -

Leuna too was one of the many industrial enterprises which successfully intervened for the improvement of conditions for the Western workers.

-Statement GIESEN, German transcript page 7597, English page 7533-

-Statement PEANTEK, " 7677 et seqq. 7608 et seq

-Affidavit STROMBECK, Schneider Exh. 48, Book X, page 9/10-

-Affidavit WEYDANZ, " " 52, X, 36 -

-Affidavit FENDEL-SARTORIUS 59, X, 62-

It was also in Leuna that SCHNEIDER and other persons in leading positions endeavored to avoid the reporting of foreigners to the Secret State Police as far as possible. This was done rarely and only in cases where it could not be prevented because of regulations, the circumstances and the character of the persons giving information - i.e. where radical National Socialists were concerned.

-Statement SCHNEIDER, German transcript page 7480, English page 7416-

- " in the cross examination 7579 7517-

- " 7553 7491-

-Statement GIESEN, German transcript page 7598 English page 9535-

-Statement PEANTEK, " 7679 " 7610-

-Affidavit HANISCH, Schneider Exh. 51 Book X 23-

-Affidavit HILL 54 X 44-

-Affidavit FENDEL-SARTORIUS 59 X 63-

b) Prisoners of war.

Reference is made to the above statements under 1 c) (page 108 and following) in connection with the employment of prisoners of war in Leuna.

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According to the regulations of the Reich Minister for Labor, the employment of prisoners of war in a hydrogenation plant such as Leuna was ordered specifically.

Schneider Exh. 49, Book X, page 13, figure 6-

This is furthermore in conformance with the rules of International Law, as the production was not directly connected with the war events. The plant did not know for what purpose the products - which were not final products, but still needed processing - were used in the civilian or any other sector of consumption. This applied on principle to the nitrogen and to the ~~benzene~~^{gasoline} section of the plant. The employment of prisoners of war was everywhere under the supervision of the Wehrmacht, as prescribed by state and international law. In productions which might probably serve war purposes, such as Isocotan and fuel for airplanes, no prisoners of war ^{or} foreigners were employed, particularly in view of their secret character.

-Statement GIESEN, German transcript page 7599 ff, English page 7336 ff,
-Statement KAEDING, " 7558, " 7591.

Of course prisoners of war in the Leuna plant were also treated decently in conformance with SCHNEIDER's attitude and the procedure usually applied there.

-Statement SCHNEIDER, German transcript page 7484, English page 7422-
-Statement GIESEN, 7599, 7536-
-Statement KAEDING, 7658, 7591-
-Statement PEANTEK, 7677, 7608-
-Affidavit WUSTROW, Schneider Exh. 47, Figure 7), Book X-
-Affidavit HANISCH, " 51, Book X, page 24-
-Affidavit KOEGLER, " 55, X, 46-

c) Disciplinary camp inmates.

The so-called disciplinary camp or E-Camp was established in Leuna under pressure from the Secret State Police. SCHNEIDER opposed this plan very strongly; however, he had to submit to the exigent demands of the omnipotent Gestapo.

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- Statement Schneider, German transcript page 7487, English page 7425-
- Affidavit Polster, Schneider Exh. 41, Book IX, pages 82/83-
- Affidavit Strombeck, " 61, X, 69/70-

In this connection it must be noted that Leuna and Schneider in any case already had constant and considerable difficulties with the Secret State Police and the SS because of a spy-system, control commissions, ~~of the~~ Counter Intelligence Officer, etc.

- Statement Schneider, German transcript page 7488, English page 7426/27-
- Statement Kaeding, 7641, 7574 -
- Affidavit Wustrow, Schneider Exh. 60, Book X-
- Affidavit Schaumburg, " 7, VIII-

and that they constantly had to intervene on behalf of persecuted employees and others. This fact is also revealed in the affidavits of foreign workers which are partly quoted above.

- Enclosures to Affidavit Landsmann, Schneider Exh. 41, Book IX-
- Affidavit Sabel, Schneider Exh. 3, Book VIII, page 4-
- Affidavit Gentschoff 45, IX, 104-
- Affidavit Heuer, 235, Suppl. Book II-
- Affidavit Janoschka 234, " " II-

Thus GENTSCHOFF states the following in this connection in his affidavit:

"I know that various measures for the treatment of the foreigners were taken by the above-mentioned Reich agencies against the will of Dr. SCHNEIDER, but I cannot describe the events more closely connected with this because I do not have the detailed knowledge. Among these events is the introduction of the E-Company. I had great difficulty in protecting various of my compatriots from being put into this E-Company. In many cases my efforts were successful only because in Herr SCHNEIDER and Herr LANDSMANN I found the most complete understanding and willingness to meet me half-way."

Following cases of death, SCHNEIDER, with other gentlemen of his plant, intervened energetically ~~in~~ ^{and successfully} in conformance with his character and with success, without shrinking from risks and despite these difficulties with the Gestapo, to achieve an improvement of the conditions, although these camps as such - as shown in the entire evidence - were solely under the authority of the SS.

- Statement Schneider, German transcript page 7493, English page 7432-
- Affidavit Spelthahn, Schneider Exh. 57, Book X, page 57-
- Affidavit Strombeck, " 61 X 69-70-
- Affidavit Wustrow " 47, figure 5, Book X, page 5-

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The following persons refer to the absolutely bearable and human working conditions for the ~~prisoners~~ ^{inmates}:

- Statement Schneider, German transcript page 7487, English page 7425-
- Affidavit Hanisch, Schneider Exh. 51, Book X, page 35-
- Affidavit Hill 54, X, 42-

d) Special Prosecution Documents

(Pros. Exh. 1333, Book 69 - Affidavit Schneider)

Reference is made to the statements on page 114 under 1 e) with regard to the manner in which this affidavit was drawn up.

Ad paragraph 2) - responsibility as plant leader of Leuna - it must be emphasized with reference to the above quotation from the commentary by Kueck, Nipperdey and Dietz, that the plant leader's responsibility for prisoners of war and ~~prisoners~~ ^{inmates} - in accordance with legal and official regulations - was limited on principle to the place of work and also in this respect was strictly supervised by the authorities.

-Statement Schneider, German transcript page 7492, English page 7431-

Ad paragraph 4) - foreign workers in Leuna - it must be pointed out that no Poles were employed in Leuna and that many of the strict government regulations for Eastern workers only had to be adhered to in the beginning. Later on, their living conditions too were improved considerably, which was to no small extent due to the efforts of the plant. (See top of page 73 and following) compare the documents in Schneider Book V from Exh. 172 onwards.

-Statement Giesen, German transcript page 7596-97, English 7533-

7667 7600-
7677 7608 ff

-Statement Peantek

-Affidavit Strombeck, Schneider Exh. 48, Book X, page 9-

-Affidavit Weydanz 52, X, 36-

-Affidavit Fendel-Sartorius 59, X, 62-

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SCHNEIDER pointed out in connection with paragraph 5) - relationship with the German Labor Front - that in the interest of the foreign workers he had refused to transfer the administration of the camps to the German Labor Front; this fact was confirmed by the competent department chiefs in Leuna and corresponds with the general statements in Minzenmay's affidavit.

-Statement Schneider, German transcript page 7493, English 7431-32-
-Affidavit Polster, Schneider Exhibit 41, Book IX, page 77 et seqq.
-Affidavit Fendel-Sartorius 59, I, 63-
-Affidavit Minzenmay, figure 4, which has already been quoted above on page 73, Schneider Exh. 131, Book III-

Ad paragraph 6) - reporting of foreigners - reference is made to the relevant statements on page 77. SCHNEIDER stated in the witness stand that these reports, the number of which is exaggerated in the affidavit, were mainly made in connection with escapes during the last years of the war which occurred during the severe air raids on Leuna.

-Statement Schneider, German transcript page 7493, English 7432-

With a thoroughly organized administration such as the German, it is obvious that a report was inevitable where a person had escaped or not returned from leave. In this connection reference must be made to the regulations concerning reports to the Aliens Police during the war, reports to the Labor Office, the reports to the Distribution and Food Office with regard to rations, which it would have been inadvisable to falsify, if only for the simple reason that a large number of authorities and plant employees noted the actual facts during check ups etc. It must furthermore be considered that a form, stating the number of employees, had to be submitted to the Labor Office and other authorities every month.

-Affidavit Minzenmay, Schneider Exh. 131, Book III, par. 3)-

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The falsification of these reports - by concealing the escape or the absence of workers - would have led to a violation of and a crime against the ordinance for the protection of the armament industry dated 21 March 1942, article 1, section 1, paragraph 1), for which offense the People's Court of Justice could impose the death penalty.

-Schneider Exh. 202, Book VI, page 42-

Finally it must be considered that the concealment from the authorities of a large number of escapes by foreigners could have resulted in espionage, sabotage and partisan danger, which in turn would have led to the most severe measures. Probably this is even one of the reasons for the extremely strict regulations governing the reporting of foreigners, as contained in Schneider Document Book VI, specially in the 2 quotations on page ~~83~~⁸² and 84. If these regulations were outwardly justified by merely referring to working discipline, this was done because the authorities feared that by mentioning the danger of sabotage, spying and partisans, the apprehensions of the population in this respect - which had existed during the entire war - might increase.

It must furthermore be considered that the number of foreigners employed in Germany during the war amounted to approximately 8 million.

-Statement Stothfang, German transcript page 3758, English 3734-

According to the excerpt on the Fuehrer conference of 3 and 5 June 1944, 30 - 40 000 foreign workers and prisoners of war per month were apprehended by the police while escaping during 1944 - the number of escaped persons was no doubt higher still.

-Schneider Exh. 65, Book VI, page 38-

According to the diagram of the Prosecution in volume 68, approximately 12 000 foreigners belonged to the Leuna personnel at the time.

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In proportion to that, a maximum of 20 reports monthly during the later war years is not at all high, in view of the additional aspect that Leuna as a hydrogenation plant was one of the plants which suffered the most severe bombing attacks in Germany, so that many foreigners fled or did not return from leave for that reason alone.

-Statement Schneider, German transcript page 7479, English 7415-
-Statement Eiesen, " 7597, " 7533-35-

Those reports furthermore also comprised criminal cases for instance. Reports for political reasons were very rare and were made only if they were inevitable for some reason (see page 127).

The Court of Appeal Frankfurt/M. pronounced the decision in 1947 that such reports do not constitute a crime against humanity. This verdict has been published, it is therefore valid and was approved by the Military Government after it was not rescinded by the latter in accordance with the Law No. 2.

-Schneider Exh. 63 and 64, Book X-

Ad paragraph 7) - employment of children - reference is made to the statements on page 117, ad paragraph 13) to the Pros. Exh. 1328. In Leuna only a small number of children over 12 years of age from Eastern refugee families were given easy, short-term employment - such as carrying messages in the Leuna plant, which was exemplary technically and hygienically - Statement Kaeding, German transcript page 7654, English 7587-

so as to save them from the detrimental consequences of loitering in the streets. Moreover, Kindergartens were established in Leuna for the foreign children and they were given lessons.

-Statement Schneider, German transcript page 7473, English 7408-
" 7577/8, 7515-
cross examination 7539/40, 7478/79-

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- Affidavit BENTRINS, SCHNEIDER-Exh. 39, Book X -
- Affidavit HANESCH, " " 51, " X page 23
- Affidavit RUDLOFF, " " 53, " X page 42
with enclosure (was only mimeographed and submitted
subsequently for the document books)

Ad number 8) and 9) - Equipment of camp E the position has already been defined above under 2 a) pages 128 etc.

Ad number 10) - Foreign Workers - the position, especially in regard to transports, has also been defined under 1 a) number 18), pages 119 - 120.

Ad number 11) - Camp Visits - SCHNEIDER testified that in the meantime he has recollected having visited still further camps, a fact which has been confirmed in other ways too.

- Statement SCHNEIDER, German transcript page 7494, English pages 7432/33 -
- Affidavit SAUER, SCHNEIDER Exhibit 4, Book VIII, page 10 -
- Affidavit LEYDANZ, " " 32, " X " 29 -
- Affidavit HILL, " " 34, " X " 44 -

Ad number 12) it must be mentioned that during the war a dismissal of workers was not possible without the approval of the authorities; and in view of the lack of manpower this in fact did not constitute a punishment, which explains the transfer of the camp leader for disciplinary reasons. The attitude taken towards these things, by SCHNEIDER, who prohibited any kind of maltreatment and strongly condemned it, is apparent from the following documents:

- Affidavit SAUER, SCHNEIDER Exhibit 4, Book VIII, page 10, also index, page III -
- Affidavit LUSTROW, " " 47, " X, " 6 -
- Affidavit FENDEL-SARTORIUS " 59, " X, " 63 -

Ad number 13) it is not correct that the Works Security Police accompanied these transports; this was done by other employees of the IG; and in the interest of the foreign workers, as already explained and proved above under 1 a), ad cipher 18, page 119 to 120.

Ad numbers 14) and 15) it must be stated that, as has been testified by SCHNEIDER and especially confirmed by affidavit LEHDSMANN, the

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- Affidavit BERTLES, SCHNEIDER-Exh. 39, Book X -
- Affidavit HANESCH, " " 51, " X page 23
- Affidavit RUDLOFF, " " 53, " X page 42
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- Statement SCHNEIDER, German transcript page 7494, English pages 7432/33 -
- Affidavit SAUER, SCHNEIDER Exhibit 4, Book VIII, page 10 -
- Affidavit SEIDANZ, " " 32, " X " 29 -
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- Affidavit SAUER, SCHNEIDER Exhibit 4, Book VIII, page 10, also index, page III -
- Affidavit RUSTON, " " 47, " X, " 6 -
- Affidavit FEDEL-SARTORIUS " 59, " X, " 63 -

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Ad numbers 14) and 15) it must be stated that, as has been testified by SCHNEIDER and especially confirmed by affidavit LINDSILNN, the

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enlistment of foreigners by Louna was carried out only on a voluntary basis in accordance with the regulations and in agreement with the German authorities. SCHNEIDER and the employees of his plant did not participate in compulsory measures. The deputies of the General Plenipotentiary Chemistry, made available by Louna, sometimes gave advice to the authorities only insofar as they endeavored to select suitable manpower from the transports in the interest of the plant as well as of the foreigners.

- cp. SCHNEIDER-Exh. 124 and 127 c, Book III and the passages quoted above from its pages 62 and 63 -
- Statement SCHNEIDER, German transcript page 7481, English, page 7417
 - " " " 7495 " " 7434
 - " " " 7578 " " 7515/16 -
 - " " " 7587 " " 7523 to
 - cross examination " " " 7544 " " 7482
 - and " " " 7548 " " 7406 -
- Affidavit LANDSLINN, SCHNEIDER Exh. 42, Book IX page 87 etc. -

(Prosecution Exh. 1334, number 6, Book 69)

Ad number 6) it must be remarked that the works security police was not established by SCHNEIDER but, as is apparent from the documents, by order of the Wehrmacht. Fire-arms were never used.

- Statement SCHNEIDER, German transcript, page 7484, English page 7421 -
- SCHNEIDER-Exh. 192, Book VI -

Ad number 8). No concentration camp inmates ^{*inmates*} were employed at Louna. This statement is based on an error by BUEHNFISCH who has rectified it.

- German transcript page 8846, English, page 8765. -

The fact that the data given in this document on the percentage of foreign workers in the personnel at Louna is not correct and that the percentage is not 50 % but less, is revealed by the documents and diagrams of the ^{*Prosecution*} ~~indictment~~ in volume 68.

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(Prosecution Exh. 1319, Book 68)

In this connection it is pointed out that according to the document, SCHNEIDER did not participate in the meeting but only received the minutes of the meeting. Therefore the statement in the index of the Book 68 is incorrect.

(Prosecution Exh. 1321, Book 68)

The object of this correspondence was to make any chemistry workers who were to be drafted for some sort of labor service in France, available to the IG. by way of enlistment through their French firms on behalf of the General Plenipotentiary Chemistry, without the intervention of any other office. This was, above all, also in the interest of the workers. Compare with this the explanation given at numbers 14) and 15) of the Prosecution Exhibit 1333, Book 69 on pages 134 and 135.

(Prosecution Doc. 1901)

The Column of Workers for the Dumps (Haldenkolonnen) was in its way quite a harmless measure and entailed no inhuman treatment of the shirkers concerned, who were in many cases Germans.

- Statement SCHNEIDER, German transcript page 7500, English, page 7518 -
Furthermore reference in this connection should also be made to the affidavit by Dr. STROMBECK - submitted as supplement to the addendum - Document Book II for Dr. SCHNEIDER - which reveals the quite harmless character of these measures.

- SCHNEIDER-Exh. 247, supplement to addendum - Book II SCHNEIDER -

e) Summary.

All this evidence and the documents about Louna show that everything was done there in order to create good working and living conditions and an existence worthy of human beings for the foreign workers, as was in keeping with SCHNEIDER's widely acknowledged just attitude and his special interest in social questions.

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- Statement ter Moor, German transcript page 6696, English page 6760. -
- " KRIUCH " " " 5440/41 " " 5410/11 -
- " GIESSEN " " " 7589 " " 7526 -
- " KLEIDING " " " 7638 " " 7572 -
- " WEISS " " " 7687 " " 7618 -
- " PEINTE " " " 7675 " " 7608 -
- Affidavit GEITSCHOFF, SCHNEIDER Exhibit 45, Book IX, compare above quotation, page 124 -
- the affidavits in Book VIII by
- ZORN, SCHNEIDER-Exh. 2/Sabel, Exh. 3/Seuer, Exh. 4/Berttrams, Exh. 5/Schaumburg, Exh. 6/from Wilhelminenhof, Exh. 10/
- in reference to which special attention is drawn to the excerpts in the index of Book VIII.

SCHNEIDER's attitude was also in accordance with the great ~~social~~ *of social policy* tradition of the IG and the position he held in it. Thus also his personality and his activities in Leuna show that he always did everything in his power to obviate punishable crimes.

3. Auschwitz

(Trial Brief of the Prosecution, Part III, V)

As is testified by SCHNEIDER and revealed by many documents of the Prosecution and of the Defense, the construction of the plant Auschwitz is attributable to instructions and orders of the authorities.

- Statement SCHNEIDER, German transcript pages 7495/96, English pages 7435/36 -
- e.g. Affidavit STRUSS, Prosecution Exh. 607, II, cipher 11, Book 31 -

The same applies to the employment of the ~~detainees~~ *inmates*.

- Statement SCHNEIDER, German transcript page 7496, English page 7438 -
- " " " 7467 " " 7405 -
- " " " 7503 " " 7443/44 -
- GOERING's order of 19 March 1941
- Prosecution Exhibit 1417, Book 72 -

For these and other reasons discussed above under 1d), the IG was compelled and able to agree to this. As far and as soon as conditions on the building site permitted, the IG endeavored to create favorable conditions for all workers by the construction of camps and the procurement of food.

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After the IG had established its own plant in Auschwitz by means of an adequate number of members of the IG - apart from the many workers who in regard to social and labor legislature belonged to the numerous building contractors, and the ~~detainees~~ ^{inmates} who were under the control of the SS - a shop committee ^(Vertrauensrat) of its own was formed for Auschwitz, in accordance with the law concerning the regulation of German labor, and Duerrfeld in his capacity as building and construction manager and later on commissary plant manager, was also appointed leader of the plant in the sense of the above mentioned law, and chief of the shop committee ^(Vertrauensrat).

- Statement Duerrfeld, German transcript page 11784, English page 11550 -
" " " 11811, " " 11577 -

According to the experience made by the competent persons, the right man had thus been chosen by the Vorstand.

- Statement SCHNEIDER, German transcript page 7499, English page 7439 -
- " GIESEN " " 7608, " " 7544 -
- " KAEDING " " 7663, " " 7595/96 -

Especially the two last-named and many other affidavits from the document books Duerrfeld confirm that Duerrfeld was a socially-minded person and particularly anxious about the welfare of his workers.

Thus many of the witnesses^{as} examined, especially both the Louna department chiefs, GIESEN and SAUER, and SCHNEIDER's former assistant Dr. KAEDING, found - after making due allowance for the extraordinary war conditions - that there was nothing unfavourable, let alone anything inhuman to observe and to report on the occasion of their numerous travels to Auschwitz.

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- Statement GIESEN, German transcript page 7601 etc, English 7537 etc.
- Affidavit SAUER, SCHNEIDER Exhibit 67, Book X -
- Statement SAUER, German transcript page 12707, English 12506 -
- " KLEIDING, " " " 7660, " 7593 -

In addition to this numerous witnesses testify that as the influence of the IG increased, ~~so that~~ conditions improved in every respect and the majority of the grievances that had existed in the beginning, were redressed.

e.g. - Statement GIESEN, German transcript page 7601, English 7537 -
SCHNEIDER himself made two journeys to Auschwitz; once he participated in part ⁱⁿ of a construction meeting in January 1943, on the occasion of which he made the same observations. He, like the majority of the civilians in Auschwitz, did not see the camp at Ponowitz, of which the SS was in charge.

- Statement SCHNEIDER, German transcript page 7502, English 7442 -
- Affidavit SAUER, SCHNEIDER-Exh. 67, Book X -

However, witnesses of the Prosecution as well as of the Defense have confirmed that the camp made an absolutely orderly impression ^{from the outside,}

- e.g. Statement RAUSCH, German transcript page 3792, English 3770 -

This too confirms SCHNEIDER's statement, that he was unable to observe anything unusual on the occasion of his two visits. Otherwise he had no special assignment which connected him with Auschwitz.

- e.g. Statement GIESEN, German transcript page 7607, English 7544 -
- " SAUER, " " " 12707, " 12506/07 -

Consequently he did not have the weekly reports submitted to him as per distribution list, since these only concerned special documents referring to the plant and were thus of interest solely to those men who were employed with its construction. As the two journeys show, and in spite of his being greatly overburdened with work, he nevertheless informed himself of the state of affairs in this case too.

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(Prosecution document 1418, Book 72, Affidavit SCHNEIDER)

Also in regard to this affidavit, reference is, to begin with, made to the statements on page 114 with regard to the rebuttal-document Prosecution Exhibit 2050.

Ad number 4) of this affidavit SCHNEIDER has already pointed out that the transfer of the Poles was a measure ordered by the government and that the IG - also in consideration for the plant - was successful in its efforts to prevent this partly.

Ad number 7) and 8), the wording of which naturally does not emanate from SCHNEIDER either, reference is made to the former explanations in regard to the employment of concentration camp inmates, according to which the IG had to agree to the allocation of ^{inmates} ~~detainees~~.

- Statement SCHNEIDER, German transcript page 7503, English 7443 -

Ad number 10) it is proved by the above legal explanations under B 1), and especially also according to the affidavit procured by the Prosecution from Mansfeld, that in his capacity as chief plant manager in regard to Auschwitz, SCHNEIDER had but a limited and indirect responsibility which, as explained, was but a natural and absolutely correct arrangement in view of the size of the IG's organization,

- Statement SCHNEIDER, German transcript page 7504, English 7445 -

Ad number 11) the evidence proves that the concentration camp inmates were not in camps only for political and racial reasons. Furthermore SCHNEIDER has pointed out that Herr von WEINBERG was not murdered in a camp but died a natural death.

- Statement SCHNEIDER, German transcript page 7504, English 7445 -

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Ad No. 12) SCHNEIDER did correct his statements to the effect that in the interests of the ~~detainees~~ ^{inmates}, the IG made the hutted camp available and also supplied the food for them, however the SS retained exclusive responsibility for the happenings inside the camp.

- Statement SCHNEIDER, German transcript, page 7504, English, page 7445;
and also T.UEBER, " " " 3575 to 79, " 3554/55

SCHNEIDER added a supplement to No. 14) to the effect that the cases of illtreatment of which he had knowledge were carried out by the Kapos of the SS and were successfully kept down by DUERRFELD, which corresponds to the actual experiences and to the evidence given.

- Statement SCHNEIDER, German transcript, page 7505, English, page 7446 -

The institution of brothels was ordered by the SS. Prosecution Exh. 1321, Book 68 -

Affidavit POLSTER, SCHNEIDER Exh. 41, Book X, page 82

Statement SCHNEIDER, German transcript, page 7541, English, page 7479

SCHNEIDER's statements under Nos. 15), 16) and 17) on social questions

and similar matters at Auschwitz are evidently not based on his own

knowledge, but on allegations by the interrogators and on his experiences

on the orders of the authorities. In this form
in other plants and ~~(illegible)~~ the remark on the reports to the SS

concerning insufficient work is certainly ~~inapplicable~~ ^{wrong}.

- Statement SCHNEIDER, German transcript, pages 7505-06, English,
page 7447.

Regarding the schools reference is made to the beginning of page 117
to page 116, ad No. 13, Prosecution Exh. 1326.

- Statement SCHNEIDER, German transcript, page 7506, English page 7447 -
" " " 7539, " " 7478 -
" " " 7577, " " 7515 -

With regard to the statements also made by the Prosecution under No.

18) on employment of prisoners of war reference is made to the Statement
under B 1 c), page 108 et seqq.

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SCHNEIDER pointed out in addition that no Soviet P.O.'s were employed at Auschwitz. Also regarding Auschwitz the Prosecution has been unable to submit any evidence by the International Red Cross or the protecting power according to which the Geneva Convention was violated there.

Statement SCHNEIDER, German transcript, page 7507, English, page 7447.

Ad No. 19) reference is made to the statements ^{on page 131} ~~under 19 c)~~ ad No. 6) of the Prosecution Exhibit, and also to SCHNEIDER's correction that no detention barracks but only detention cells were erected at the foreign workers' camps.

- Statement SCHNEIDER, German transcript, page 7507, English, page 7447 -
Ad No. 20) SCHNEIDER pointed out that the E camp was not erected voluntarily by the IG but on the demands of the SS, and that there was no stronger compulsion in National Socialist Germany than a demand by the SS.

- Statement SCHNEIDER, German transcript, page 7507, English, page 7447 -
Ad No. 21) it has to be pointed out that the crematorium at Auschwitz was explained by the size of the camp and the epidemics often breaking out there.

- Statement SCHNEIDER, German transcript, page 7508, English, page 7448;
- Statement GILSEN, " " " 7605, English, " 7540/
41 -

Regarding the passings, SCHNEIDER heard of these only by way of rumors and in a way on which it was impossible to check, at the time of the heavy air-raids on Launa in 1944. It can easily be understood that he doubted the accuracy of this rumor and, above all, did not in any way connect it up with the labor camp Monowitz. This did correspond too to actual experiences under the National Socialist regime.

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as the ~~detainees~~ ^{inmates} at Monowitz were brought there and trained for a specially important production purpose. Besides, SCHNEIDER, who lived hundreds of kilometers away from Auschwitz, naturally did not know any details about a connection between the Auschwitz and Birkenau camps on the one hand and the Auschwitz plant and camp Monowitz on the other hand.

- Statement SCHNEIDER, German transcript, pages 7507 et seqq,
English, pages 7447 et seqq.

Even FAUST was not informed about the selections for Birkenau, according to statements by the witness MUENCH.

- German transcript, page 14676, English, page 14337. -

All those things were covered up by Adolf HITLER's famous secret order.

- SCHNEIDER Exh. 68, Book X. -

This order was issued at the beginning of the war.

- Affidavit by Col. MUENCH, defense Exh. 167, D.A.G. Book III.

Thereby those gruesome happenings were successfully kept absolutely secret.

- Statement MUENCH, German transcript, page 14667, English, page 14328 -
- Certificate of the Office of the Archbishop at Munich,
SCHNEIDER Exh. 243, supplementary Book II -
- HOERLEIN-Exh. 78 to 86, Book IV -
- Eugen KOGON, Der SS-Staat,
SCHNEIDER Doc. 130, Ident. No. 70, Book X, page 97.

The International Red Cross, too, was deceived about the conditions at the concentration camp Auschwitz during their visits there.

- Statement MUENCH, German transcript, pages 14668/69, English, pages 14330/31 -

Otherwise it would not have led to the ~~instructions given by a neutral~~ ^{exclusion into the German}
~~sphere of power, as described by the witness Grotter.~~
~~power to the German power, described by the witness (illegible).~~

- German transcript, page 3930, English page 3902. -

Even before the war it was possible to keep the happenings in the concentration camps secret, in Germany at least.

CLOSING BRIEF SCHNEIDER

- Excerpt from the book by Pleton, "Nazis and Germans", published in
Gt. Britain in 1940. -
SCHNEIDER Exh. 73, Book X. -

Hence it was not possible to obtain any clear information on those matters. This may be seen from the statements by the Reich Minister FRANK, as well as from the statements by the present Secretary of State SACHS who, as a Jew, belonged to the circles concerned, in other cases before the Tribunals.

- SCHNEIDER Exh. 245, Supplementary Book II,
SCHNEIDER Exh. 69, Book X -

Every source of information, no matter whether ~~detainees~~ ^{inmate} or a free person, immediately became a victim of the SS's revenge.

In this connection one must also not lose sight of the absolute control over all means of information in Germany during that time. The competent SS circles would have described everything as lying propaganda and taken the severest measures to counteract it.

- Statement MUEHCH, German transcript, page 14667, English, page 14328 -
- Affidavit PRIBILLA, together with appendix,
SCHNEIDER Exh. 244, Supplementary Book II, -
- Statement DIELS, German transcript, page 4454, English, page 4437 -

Even the International Red Cross apparently saw no possibility of intervening when the witness COMARD gave them a report of the incidents.

- Statement COMARD, German transcript, page 3709, English pages 3685/86 -

All these pieces of evidence, especially the statements by Dr. MUEHCH and Father PRIBILLA, show that it was impossible to obtain any clarity on those vague rumors which nobody could believe and to take steps to counteract them.

Such active steps might only have led to camp Bonowitz being dissolved and the ~~detainees~~ ^{inmates} there being returned to the main camp.

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where they might have met with the same fate as their comrades there. Finally it is still an open question whether HITLER's order stopping the gassings was already in effect at that time. In that case there was no necessity for further steps, so that the omission of such an act is irrelevant.

- Statement MUENCH, German transcript, page 14669, English, page 14331 -

C. Other accusations under count III.

Degesch supplies and experiments.

The character of the Degesch supplies for medicinal purposes was unknown to SCHNEIDER. All that was outside his sphere of tasks and his competence. Therefore there ^{can} be no question of his bearing any criminal responsibility in that respect.

The same applies to the allegations of the Prosecution regarding a connection between the IG and experiments on human beings.

CLOSING BRIEF SCHNEIDER

IV. SCHNEIDER's connections with the SS.

(Trial Brief of the Prosecution, part IV, II 4 to 5)

(Prosecution Exh. 317, Book 11)

The Prosecution alleges that Dr. SCHNEIDER was a sponsoring member of the criminal SS organization. They tried to link up this sponsoring membership with SCHNEIDER's position as Hauptabwehrbeauftragter and as Hauptbetriebsfuhrer.

A. Sponsoring membership.

The IMT judgment sums up SS membership as follows,

"The tribunal includes in the SS all those persons who were officially taken into the SS as members, this includes the members of the General SS, the members of the Waffen-SS, the members of the SS Deathhead units and the members of all the different police units which were members of the SS. The tribunal does not include the so-called Cavalry SS."

IMT official edition, English page 102, German page 16527.

The verdict does enumerate the SS groups one by one and even excludes one undoubtedly SS organization, the Cavalry SS. However, it does not list the "sponsoring members" at all.

The Prosecution declared in the IMT case that by SS members they mean people who took the oath and are listed in the membership files as members of the General SS, the Death-head units or the Waffen SS.

- SCHNEIDER Exh. 80, Supplementary Book I,
Transcript, excerpt from the IMT -

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SCHNEIDER did not take the oath.

- Affidavit SAUER, SCHNEIDER Exh. 78, Supplementary Doc. Book I -

The Prosecution has not submitted, and will be unable to submit a membership list in which SCHNEIDER is listed as a member in ^{the} above sense.

Sponsoring members are not members within the meaning of the IMT judgment. Accordingly the judgment in case 3 stated that sponsoring members were not members of the criminal SS organization.

- SCHNEIDER Exh. 79, supplementary book I -

In actual fact the activity of the sponsoring members was confined to paying membership dues. In most cases they intended thereby to evade greater responsibilities towards the party organizations. That was the reason why several leading people at Louna, including SCHNEIDER, became sponsoring members. Among those there was also the former chief of Louna, Dr. DEHNEL, who was an outspoken opponent of National Socialism up to his death.

- Statement SCHNEIDER, German transcript, pages 7389/90,
English, pages 7324/25 -

- Affidavit SAUER, SCHNEIDER Exh. 78, Supplementary Book II -

- Affidavit HAEFLICH, SCHNEIDER Exh. 77, Book X -

- Affidavit RUTHER, Prosecution Exh. 258, Book 10 -

How little the sponsoring membership meant to the National-Socialists is shown by the fact that it was not adequate for the recognition of political reliability.

- SCHNEIDER Exh. 76, Book X -

How easily one could become a sponsoring member and how the SS canvassed for that is shown by the statement of the witness KAEDING:

- German transcript, pages 7644/45, English, page 7578/79 -

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B. Chief Counter Intelligence Officer (Hauptabwehrbeauftragter)

It is completely incorrect if the prosecution alleges that Schneider's position as Hauptabwehrbeauftragter had anything to do with his sponsoring membership. This commission had nothing whatever to do with it.

Aff. KRAUCH, Schneider Exh. 246, supplementary book II
Testimony for Hear, transcript German page 7238/39, English p. 7178/79
" Schneider " " " 7516 7456

It is after all a well-known fact that there was acute antagonism between the counter-intelligence organization and the SS.

The combined position of military and security police counter-intelligence officer was the outcome of the agreements concluded between the Wehrmacht and the Reich Security Main Office. Accordingly, the counter-intelligence officers appointed by the Wehrmacht were immediately approved also for the political sector, by the Reich Security Main Office agencies. Most counterintelligence officers, especially those attached to IG., *those activities* tried to evade ~~this job~~ wherever possible.

Prosecution Exh. 163, book VI
Testimony Pohn, transcript German page 10199, English page 10060.-
Affidavit Dielman, Schneider Exh. 236, supplementary book II -
Affidavit v.d.Hoyde, prosecution Exh. 164, section 3, book VI -

In view of this the IMT previously decided that those counter-intelligence people are not to be counted as members of the Criminal Security Service.

Schneider-Exh. 26 book VIII -

(Prosecution Exh. 1902 and 1903)

It is insignificant ^{in this connection} that the counter-intelligence officers were unable to evade all contact with the Gestapo. This applies for instance to the attendance at a Gestapo lecture mentioned in the said prosecution exhibits. This was also attended, according to the document, by the former counter-intelligence officer, Dr. Schaumburg, whose anti-National-Socialist attitude became evident in the presentation of the evidence.

CLOSING BRIEF SCHNEIDER

Schneider Exh. 7 book VIII

Testimony Kaeding, transcript German page 7641, English page 7574

Dr. Schaumburg confirms in a further affidavit that this lecture was not held in the offices of the Gestapo.

Schneider Exh. 237, supplementary book II

(r. Prosecution Exh. 1905)

This document according to prosecution Exh. 163, book 6, is nothing but an unavoidable dissemination of the directives concerned.

Testimony von der Heyde, transcript German page 12734 etc., English page 12435.

Neither did Schneider's appointment as Chief Betriebsfuehrer have anything to do with his sponsoring membership.

Testimony ter Meer transcript German page 7237 etc., English page 7178

" KRAUCH " " " 5440 " " 5410

Affidavit Krauch, Schneider Exh. 246, supplementary book II.

Of course, Schneider, like every Betriebsfuehrer and counterintelligence officer of that rank in Germany, knew about the modalities of the National-Socialist compulsory labor program described earlier in part III under A. The fact that he had no further knowledge of the secrets of the SS, is best proved by the fact that Schneider's relations with the SS and its organizations were strained and bad, as is shown by the whole evidence presentation.

CLOSING BRIEF SCHNEIDER

Testimony Schneider, transcript German page 7488, English page 7426/27;
Testimony Schneider, transcript German page 7511, English page 7450/51
Testimony Kneding, transcript German page 7641, English page 7574
Affidavit Schaumburg, Schneider-Exh. 7, book VIII
Affidavit Wistrow, Schneider-Exh. 60, book X.

All these allegations of the prosecution completely by-pass the fact, as the evidence presentation in general has shown, that the relations between the IG. and its leaders and the Party and SS were by no means close, and were mostly strained, to say the least.

But all this is not decisive, because the judgments of the IMT and the jurists' case state that neither the sponsoring members nor the counterintelligence members belong to the criminal organizations within the SS.

V. Collective Responsibility and Conspiracy.

To counts V and VI.

Reference is made to the earlier statements, especially under count II, and to those made by the other counsels for the defense, as well as the expert opinion given by Professor Mezger - defense Exh. 280 - and Attorney Schmidt, Defense Exh. 281 -.

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VI. Schneider's Personality.

Schneider's professional achievements as an inventor and factory manager are recognized even by the prosecution,

German Transcript page 165, English text page 19.
Aff. Holdermann, Schneider-Exh. 11 and 18 book VIII
Aff. Mittasch, Schneider-Exh. 17, book VIII.

Schneider himself described his political outlook. This description is attested by the most varied pieces of evidence.

Testimony Schneider, transcript German page 7389, English page 7316/17
Aff. Zorn, Schneider Exh. 2, book VIII
Aff. Sabol, Schneider Exh. 3, book VIII
Aff. Herold, Schneider Exh. 6, book VIII

Schneider's attitude towards the church is seen from the fact that he was a member of the Church Parish Council (Gemeindekirchenrat) ⁱⁿ Louna from 1936-1945, in spite of the persecution of the churches in Germany.

Certificate of the Church Parish Council.
Schneider Exh. 9, book VIII-

Schneider's social outlook and eagerness to help are confirmed by numerous witnesses and affiants.

He frequently even intervened on behalf of people who were in political difficulties and helped them.

Testimony Kaeding, Transcript German page 7641, English page 7574
Aff. Sablo, Schneider Exh. 3, book VIII
Aff. Schaumburg Schneider Exh. 7, book VIII
Aff. Janoschka, Schneider Exh. 234 supplementary book II
Aff. Heuer, Schneider Exh. 235 supplementary book II

Aff. Bortrams, Schneider Exh. 5, book VIII
Affidavit from Wilhelminenhof 10, book VIII

Testimony Krauch, transcript German page 5440/41, English page 5410
Testimony ter Herr, transcript German page 7238 etc. English page 7178

An overall picture of his character can be obtained from the following testimonies in particular:

CLOSING BRIEF SCHNEIDER

Kaeding , Transcript G. page 7638, English page 7572:

"I would call Dr. Schneider a man of great honesty and uprightness. He was very well liked by his subordinates. He was absolutely correct, and I can only say that under his leadership, or, as far as I know him, he was in charge of social welfare matters, and Dr. Baetofisch was in charge of technical matters, and they had an effect on Leuna that could not have been better. We were all proud to work at Leuna."

Peantok, Transcript German page 7675, English page 760⁶:

"Dr. Schneider was not "an unapproachable man", - an unapproachable plant leader. He was closely connected with the workers, and knew his way around, although the plant was very large. As far as I know, he always explained to the workers when they were called for roll call, that they should approach with their complaints unhesitatingly, and I know many cases where Dr. Schneider did help."

Weiss, Transcript German page 7687, English page 761⁹:

(Betriebsführer)
"Dr. Schneider was the classical plant leader, that is, he was an enthusiastic technical man and he was closely connected with his plant. He helped build it up and he was popular with his workers and well liked by them. What we colleagues esteemed in him was his simplicity, his objectivity, his frankness, his honesty, his unconditional honesty. Dr. Schneider did not like to have a big appearance on the outside. The excellent qualities of his personality were shown in the intimate circle of his associates and they were demonstrated during the negotiations with the authorities in other agencies."

The rest of the evidence presentation confirmed this picture, and for this reason too, it must be believed that he, who concerned himself for years, deeply and as far as possible primarily, with the welfare of the people entrusted to him, is not guilty of any crime. He had to submit to the program of the National Socialist regime just like millions of other people. For this he cannot be held criminally responsible.

Judgment in case 5, and Schneider exh. 231, book VIII.

This Final Brief justifies the motion that the defendant Schneider be acquitted on all counts.

Nuernberg, 1 June 1948

Signature: Dr. Hellmuth DIX
(Dr. Hellmuth Dix)

CLOSING BRIEF SCHNEIDER

CERTIFICATE OF TRANSLATION

16 June 1948

We, the undersigned, herewith certify that we are duly appointed translators for the English and German languages and that the above is a true and correct translation of the Closing Brief Schneider,

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MONICA WELLMOOD

ETO No. 20148

" 14 - 21

44 - 49

75 - 82

ELLI KENNEDY

ETO No. 16673

" 22 - 26

54 - 59

97 - 103

111 - 118

127 - 133

AMALIA WIEZER

ETO No. 25967

" 34 - 41

119 - 126

H.B. BUSSMANN

ETO No. 20128

" 50 - 53a

104 - 110

MANNAH SCHLESINGER

ETO No. 20082

" 68 - 74

83 - 90

A.H. DOVEY

ETO No. 20115

"end"

*Case 6
Defense*

CLOSING BRIEF

by
Dr. Walter S i e m e r s ,
Attorney-at-Law at
HAMBURG

Before the
American Military Tribunal VI in Case VI:
Carl K r a u c h et al
for

Dr. Georg Von SCHNITZLER

Nuernberg, May 1948

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CLOSING BRIEF -VON SCHNITZLER

I N D E X

for Closing Brief Dr. von Schnitzler

I. Count I of the Indictment - War of Aggression

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CLOSING BRIEF -VON SCHNITZLER

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Count I of the Indictment - Wars of
Aggression.

Introductory Remarks.

Concerning the legal foundations, I refer to the statements in Dr. v. Metzler's final plea, who has taken it upon himself to deal with the general aspects of this topic.

1. Personal Guilt is Required

a- "It is one of the most important of these principles acknowledged legal foundation) that any criminal guilt must be a personal one." (IMT Verdict)

b. "Nobody must be convicted if his or her personal guilt has not been fully established."

Verdict of the American Military Tribunal
IV in Case V (Flick Trial) of 22 December
1947, Preamble .

2. International legal thinking up to World War II held the view that by entering upon international legally binding agreements, such obligations were expressly binding for the various countries only, irrespective of whether codified law or common law was involved ; at any rate, this referred to such regulations which were based on government records and documents, as for example, a declaration of war. The individual citizen does not have the authority, nor is he obliged, to examine any such decisions of his government.

A private person, as for example an industrialist, cannot be called to account under international law. Even the IMT Verdict does not set aside this ruling, as this verdict declared only such persons convicted who acted on behalf of their respective country and government, and who were to be considered representatives of their country and government because of their official positions.

As to this legal argument, I refer to my statements in Final Plea, Number 3 to 7, and to the

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Opinion of the international law scholar
Prof. Dr. Norbert Kraus, Schnitzler Doc.
102, Ident. No. 105 in Book VI.

According to Article 10 of ordinance No. 7, dated
16 October 1946, the American Military Tribunals are bound to
adhere to the findings of the IMT Verdict. The IMT Verdict
has established that only then can a defendant be considered
personally guilty and accountable, if he had a positive know-
ledge of Hitler's plans of aggression; this conception was a
very strict yardstick as to the prosecution's obligation to
prove its contentions, and thus, a conviction was only ob-
tained if a defendant participated in the "Four Secret
Conferences" (5 November 1937, 23 May 1939, 22 August 1939, and
23 November 1939, or if he had been initiated about the plans
that were discussed at those conferences as Hitler's confiden-
tial representative,

see the four key documents, Schnitzler Doc.
and Exh. 15 - 19 in Book I, Excerpt from
the IMT verdict of 30 September / 1 October
1946 Schnitzler Doc. 21, Ident. No. 21,
Book I, Final Plea, Numbers 8 and 9.

The official in charge of the Party Chancellery and
Hitler's confidential representative, Bormann, was acquitted
by the IMT for the following reasons:

"He did not attend any of those important
conferences, where Hitler revealed his
aggressive plans one by one."
Schnitzler Doc. 21 in Book I, P. 145.

Schnitzler did not attend any of those 4 secret conferences
nor was he Hitler's confidential representative or a confi-
dential representative of the leading people who were closest
to Hitler. Thus, the prosecution did not prove its contention,
and it even did not introduce such evidence.

4. Instead, the prosecution attempted to introduce indirect
evidence for such a knowledge by various documents introduced
as circumstantial evidence. In pursuance to the IMT verdict.
any circumstantial evidence must be adjudged extremely severe
as can be seen from the fact that the circumstantial evidence
method which was attempted against Schacht in the IMT trial
was ruled out by the Court and did not end in a conviction.

CLOSING BRIEF -VON SCHNITZLER

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Schnitzler Doc. 21, Book I, P.126/128

Correspondingly, the circumstantial evidence against Schnitzler could only be even more unsuccessful. I shall deal with the more important parts of the circumstantial evidence as follows: a. Alliance with Hitler.

5. In order to refute this charge, I refer to the case in chief and the final plea of Dr. Rudolf Dix.

Amongst others in this respect, he was accused of giving certain donations, and in particular the donation of RM RM 400.000, after the meeting in Goering's house on 20 February 1933. Payment was made on 27 February 1933, prosecution exhibit 56, NI-391, Book III, G.P. 122, E.P. 112, Trial Brief P. 81.

In this connection, the prosecution points out the fact that "on the following day" the Reichstag Building was set afire, and that afterwards Hitler decreed that "certain sections of the German Constitution were suspended for an indefinite period of time", Prosecution Exhibit 63, 390 PS, Book III, G.P. 160, E.P. 136.

Furthermore, the prosecution claims that during this meeting Hitler had expressed a "highly treasonable intent," in that he wanted to seize power by force if he could not gain control through the elections. Prosecution Brief, Section 10. These claims are refuted by the following :

aa) This collection was nothing more but raising an ordinary election fund, which was quite customary during the Parliamentary era. This election fund was not solely destined for the Nazis but for the NSDAP and the German National People's Party. (Deutschnationale Volkspartei). Examination Schacht in the IMT and Flick Trials, Schnitzlers Doc. and Exh. 9 and 10 Book I.

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Following a proposal of Schnitzler's, the election fund was also raised for the German People's Party. (Deutsche Volkspartei). Examination Schadt in the IMT and Flick Trials, Schnitzler's Doc. Exh. 9 and 10 in Book I, P.1-13. Examination Dr. Flick on 12 March 1948 in the I.G. Trials, Trans. G.P. 9114 ff, E.P. 9117 ff, in particular G.P. 9131/32, E.P. 9135/36.

bb) The bank remittance cannot be considered the cause for the Reichstag fire nor for the decree of 28 February 1933. When the payment was made, neither the I.G. nor Schnitzler were in a position to suspect what was going to happen on the following day.

cc) At the time this conference, took place, Hitler had been in power for a whole month, and he did not need any elections to establish himself. This is proved by the decree of 28 February (Exh. 63), by which Hitler suspended a part of the German Constitution even prior to the elections.

dd) According to Flick's testimony, who donated RM 250,000 an amount of RM 400,000 was nothing if measured against the size of the I.G. concern. Furthermore, both Flick and the I.G. had donated large amounts in 1932 (Flick 1,000,000 marks) for Hindenburg's election fund in contesting Hitler's candidature in the Reich Presidential Elections.

Another factor must be added, i.e. that the National Socialists were particularly hostile towards all cartels and towards the I.G. Trans. G.P. 9133/40, E.P. 9137/44, see also: final plea, No. 11.

Reich Governor Mutschmann said to Dr. Flick:

"I'm all in favor of maintaining a private enterprise system, with one exception however; the I.G. has got to be Nationalized."

On 10 November 1933, during a speech in Berlin - Siemensstadt Hitler said:

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"It was not the intellectuals who gave me the courage to launch this gigantic task, but I was emboldened to carry on because I know the German workers and the German peasants. I was absolutely certain that those two sections of our people would become the pillars of the new German Reich."

And in 1940 Hitler said:

"Now is the time to set a warning example by having a German industrialist put up against a wall and shot and it must be a prominent one at that."

Testimony Flick , Trans. G.P. 9145, E.P. 9149

6. b) Goering's Speech on 17 December 1936 in the Preussenhaus in the presence of Bosh and Schnitzler:

"We are all set for general mobilization and we are already in a state of war; however, the shooting has not commenced as yet." Prosecution Exh. 421, NI-051, Book 20, G.P. 59, E.P. 9,

Schnitzler reported about this statement in the expanded Farben Committee, and this report was "strictly confidential". Prosecution Exh. 423, NI-4192, Book XX, G.P. 70, E.P. 15.

The terms "strictly confidential" and "top secret of the state" were often "grossly abused", as can be seen from Dr. Kuepper's testimony, who incidentally does not even remember Schnitzler's report. Kuepper recalls Goering's bombastic closing words from the newspapers, and because his utterances were openly discussed. Trans. G.P. 6049/51, E.P. 5993/95. Goering's speech was published in the newspapers. Schnitzler Doc. and Exh. No. 13, Book II, page 19. The prosecution witness Under Secretary of State Koerner was forced to admit during cross-examination that Goering's speech was by no means secret or even confidential, and that it was quite impossible to deduce from Hitler's or Goering's words on that day that an aggressive war was imminent. Koerner testimony, Trans. G.P. 2266/67, E.P. 2273/74.

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Outside Germany, Goering's bombastic words were considered just as so much wind as all the other much favored National Socialist words, which were taken from military lingo and transferred to economic matters, such as "battle of production", labor front, soldiers of labor, cannons instead of butter'. See also prosecution witness Koerner's testimony; Trans. G. P. 22779/00, E. P. 2267/00. Later on, Winston Churchill advised the anti-National Socialist Under Secretary of State von Weizsaecker to join the Party. Schnitzler Doc. No. and Exh. No. 14, Book I, P. 23. See Churchill's opinion about Hitler; Schnitzler Doc. and Exh. No. 12, Book I, P. 16, as well as Final Plea Section 12.

7. c. Industrial Espionage conducted by foreign representations, I. G. liaison officials, collaboration with the Nazi Organization for Germans Living Abroad and with the Party,

Indictment, specification 02, Trial Brief P. 65, 69 and 93.

As its main argumentation, the prosecution introduced an agreement between the I. G. and the A. O. concerning collaboration between foreign representations and the A. O. Prosecution Exh. 303, NI-4959, Book 45, G. P. 7, E. P. 5, under sections 9 and 10. The prosecution alleges that I. G. representatives and employees abroad drafted programs in accordance with this agreement and worked together with the A. O. in their implementation. In order to refute this charge I refer to the following:

- aa) Dr. Naht's statements during his defense plea for Dr. Illener,
- bb) My final plea, No. 13,
- cc) The prosecution has not proved at all, and has even failed to make it appear credible, that the A. O. participated in preparations for an aggressive war.

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dd) The I.G. liaison officials did not concern themselves at all with politics, let alone with preparations for war, but their task was exclusively confined to establishing industrial relations between the I.G. foreign representations for various economic fields in foreign countries. In selecting new men for the foreign representations, political reliability did not even enter the picture. Examination Dr. Overhoff on 26 January 1948, Trans. G.P. 5803/06 E.P. 5762/

ee) The differences between I.G. and the A.O. were always undetermined because the A.O. did not favor at all those representatives who had partly been working abroad for several decades, because of their social and political positions. It was because of those interminable differences that, eventually, Kommerzienrat Waibel and Dr. von Schnitzler endeavored to bring about a reconciliation by diplomatic means in order to quiet the A.O. objections once and for all as far as this was possible. Kommerzienrat Waibel was in charge of the negotiation which he conducted very skillfully, and eventually an agreement was achieved, Exh. 63 dated 10 September 1947, which in actual fact did not bind them in any way. The I.G. did not relieve any of its representatives of their assignments because of political reasons but obliged itself to ascertain that, only in the case of new, young and subordinate employees, these officials were members of the labor front, which fact in view of the collective labor front memberships in large concerns was "quite a matter of fact a tautology", according to Overhoff. Overhoff Trans. G.P. 5 /15 ? E.P. 5766/74. Just as non-committal was the promise given in connection with the loyalty declarations submitted by the prosecution. Exh. 801, NI-2782, Book 45, H.P. 20, E.P. 12, The above mentioned declarations do not contain an obligatory clause at all but merely an excerpt from trans. 363, which incidentally deals with many points, and which is 13 pages long; however in the English Document Book the prosecution has submitted only a very abbreviated version.

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Moreover, such loyalty declarations were generally not signed by junior employees at all, at any rate not in the Dyestuff field. See Overhoff, Trans. G.P.5813/14 E.P.5772/73. Schnitzler Doc. 33, through 36, Exh. 37, through 40, Book II, P.61/67.

ff) Kommerzienrat Waibel's letter of invitation to a breakfast with the A.O. and Hauleiter Bohle, on 4 November 1942 in the Adlon Hotel in Berlin, was couched in equally as diplomatic and cautious terms. Prosecution Exh. 802, NI-631, Book 45, G.P.23, E.P.14. It was Waibel's intention to "smoothen out in the course of diplomatic and sociable events" the repeated and frequent differences with the A.O.

Examination Overhoff, Trans.G.P. 5830/32, E.P. 5738/90, Pros.Exh. 808, NI-7984, Book 45, G.P.32 E.P.53e, See Exam. Overhoff, Trans. G.P.5834/39 E.P. 5792/97 Exh. 894, NI-6077, Book 48, G.P.159, E.P. 157. Affid. Erich Mueller, Schnitzler Exh. 190, Doc. 204, Book XI, P.45.

gg) Of 22 executives in the I.G. representations abroad, which came under Dr. Overhoff's jurisdiction, only 3 were in the Party and of those only 2 had quite insignificant official positions, according to the list he has submitted.

Schnitzler Exh. and Doc. 3, Book II, P.52.

hh) The correspondence between the A.G. and the I.G. (Kommerzienrat Waibel) concerning the dismissal of Kurt Flinsch, the official in charge of the Compania de Anilinas Alemanas, Buenos Aires, because of his negative attitude towards National Socialism, which had been demanded by the A.O., shows with skillful and diplomatic means Kommerzienrat Waibel rejected the demands of the A.O. Schnitzler Exh. and Doc. 6, Book II, P. 56

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ii) Dr. Overhoff's descriptions concerning the position and the attitude of the officials in charge of foreign representations and his account of the continuous differences with the A.O. show clearly that in actual fact there was no co-operation at all let alone participation in preparing for aggressive war. Trans. G. P. 5800/40, E. P. 5759/5804. The witness Dr. Schlotterer confirmed on 26 January 1940 the serious altercations with the A. O. at the same time the witness also mentioned that the Reich Ministry for the Economy, and in particular he himself, attempted to bring about a reconciliation. One example should suffice: the I. G. representations in Eastern Europe were under the financial supervision of Dr. Roth who was Jewish.

The A. O. demanded Dr. Roth's dismissal; however, the I. G. refused to comply and it was supported by us in this respect. Eventually, the pressure put upon us by the political offices became so strong, that the I. G. was forced to yield. Afterwards, the company paid Dr. Roth a considerable final compensation enabling him to start anew in Switzerland. Exh. Dr. Schlotterer, Trans. G. P. 5880/1, E. P. 5759/60.

kk) The prosecution has submitted documents dealing with the caution to be used in all correspondences. Exh. 894, NI-6077, Book 48, G. P. 157, E. P. 157, Exh. 895, NI-4842, Book 48, G. P. 165, E. P. 165.

In this respect all I can say is that I do not understand how any criminal plans of aggression can be linked to scientific industrial enterprise with patents and processing methods which had to be kept secret because of economy reasons, and with diverse business connections which are not revealed by any one company, so that the instruction to be careful as far as correspondence is concerned was quite understandable, especially in the second case (Exh. 895) in question bears the date 19 September 1939, that means dates back to earlier days.

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I. G. Gesellschaft fuer Verkaufsfoerderung, (Association for Sales
Promotion) Indictment, Spec. 64/65, Trial Brief Page 72.

National Advertising Council of German Economy and the Advertising
Committee.

Indictment, Spec. 34, Trial Brief Pages 55 and 83.

Ala., Trial Brief Page 55.

Collaboration with Counter Intelligence (Major Bloch) and OKW,
Jesco v. Tuckman, Trial Brief v. 71. The claim of the prosecu-
tor that all these events could be called espionage activities on the
part of the I. G., has been completely refuted. The following sum-
mery references should suffice for this:

1. The Association for Sales Promotion is said to have been an
organization which the I. G. had commissioned the defendant
Schnitzler in spring 1940 to set up, and it is claimed, furthermore
that this firm was under his direction and was to be used as
cover firm for the spies which the Counter Intelligence People
had sent abroad. Trial Brief Page 71. Everything contained in the
sentence is completely and totally erroneous. Dr. Doering
on 3 May 1940, Trans. G. 3. 13566; E. 3. 13235. The above named
association was established long before the war, i. e. in 1937,
and it had nothing to do whatsoever with the OKW and the Counter
Intelligence Department. Neither Schnitzler nor the I. G. had any-
thing to do with the establishment of the association (the I. G.,
moreover had no dealings whatsoever with the association, and
none of the witnesses who were asked about it, except Doering,
knew of its existence); but it was a Herr Kunzler who was instru-
mental in organizing it, and he was an advertising specialist.
The purpose of this association was to organize industrial adver-
tising and canvassing, to effect market research work and eco-
nomic analysis when commissioned by private firms who wanted to
boost their sales. Kunzler requested the industry

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board was established which comprised advertising and propaganda specialists from industry, and of which the witness Dr. Doering was a specialist member for the Reich Group Industry. Schnitzler was elected chairman because he had a considerable reputation in the field of industrial advertising and propaganda for a period of 20 years. For the very same reason, he was also called into the National Advertising Council and, within the Reich Group Industry, he was appointed chairman of the exhibition and trade fair committee. Doering added that for the same reason the International Chamber of Commerce in Paris appointed him chairman of the local committee for Exhibition and Trade Fair Matters, and, apart from other industrialists, was also elected a member of the Allgemeine Anzeigen A.G., Aufsichtsrat, which was nothing else but a mere advertising agency and not, as has been claimed by the prosecution, a propaganda branch office.

For a long time, i. e. in 1929, a long time before Hitler came to power, the Reich Foreign Minister at that time, Stresemann, appointed Schnitzler as Reich Commissioner for the Barcelona World Fair, merely because Schnitzler was renowned in the field of propaganda - advertising, exhibitions and trade fairs.

In order to prove this fact it will suffice, I expect, to refer to the testimony of the witness Dr. Doering: Trans. G. P. 13564/70, E. P. 13231/36, my final plea, No. 14, as well as the following affidavits: Reich Minister Hans v. Kauner, retired, Schnitzler Exh. 186, Doc. 196, Book 11, Page 26; Wilhelm Zangen, Director of the Reich Group Industry, Schn. Exh. 187, Doc. 197, Book XI, P. 29; Dr. Fritz Fischer-Jene, Department Chief of the Propaganda and Public Relations Department of I. G., Schn. Exh. 189, Doc. 199, Book XI, P. 37. The National Advertising Council was not concerned with political tasks; political propaganda was not allowed;

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Affidavit Prof. Dr. Hunke, Schnitzler Exh. 34, Doc. 31, Book II, P. 42 and the law promulgating the establishment of the National Advertising Council, Schnitzler Exh. 33, Doc. 30, Book II, P. 38.

Ala had / ^{no} Political tasks: Affidavit Dr. Max Winkler, Schnitzler Exh. 35, Doc. 203, Book II, P. 45a. Concerning the International Chamber of Commerce and Schnitzler's position as chairman of the Committee for Exhibition and Trade Fair matters, see Affidavit Dr. Ferdinand Hercke, Schnitzler Exh. 36, Doc. 32, Book II, P. 46.

bb) Concerning the connection to the Counter Intelligence Department, the prosecution has tried to prove this by introducing the documents exh. 926 through 1941, Book 49, G. P. 139/190, E. P. 126/169. However, the prosecution failed to take the following into account: Major Bloch who has been named in this connection was not an officer who was competent for intelligence and security matters within the OKW and the Counter Intelligence Department. Rather, he was concerned with industrial counterintelligence (Abbreviation: ABW. - I.I.), i. e. that office which was responsible for security as regards secret matters within the various branches of industry and to protect industry from enemy espionage and sabotage activities, in other words, an organization which every country in the world has. This is also evident from the fact that Major Bloch contacted the Association for Sales Promotion during the war and that his orders covered purely industrial fields. Doering, Trans. P. 13570, E. P. 13238, as well as the affidavit Albrecht Focke, Schnitzler Exh. 41, Doc. 37, Book II, P. 68, according to which Focke, a subordinate and later the successor of Bloch, was the Counter Intelligence and Security Officer in Cologne; Focke emphasized the lack of co-operation on the part of the I. G. with the responsible Counter Intelligence Officer, which was reported to him by his "industrial investigators".

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It must be stated that the prosecution failed completely to prove that any of these offices who worked with industrial concerns had anything to do with espionage. Major Block did not channel his orders to Herr Kuenzler . . . until after war broke out, and at that time, it is stated, it would have been impossible to reject any such orders, Doering, Trans. G. P. 13570/1, E. P. 13238/9, especially not in the case when those orders, as Doering reports Kuenzler as having explicitly stated to the Executive Board, were exclusively confined - quite in keeping with the name of the association - to information concerning industrial problems, and had nothing to do with, say, military or political, let alone Counter Intelligence and espionage, matters. Doering, Trans. G. P. 13571, E. P. 13239.

Any such orders were passed on to Kuenzler, and the Executive Board was not consulted beforehand. Doering, Trans. G. P. 13570, E. P. 13238. Although those orders concerned were industrial orders, the Executive Board, in particular Schnitzler, Krause, and Doering, did not approve of them, because the company - already embarrassed and in difficulties because of the war which occasioned a slow-down of the flow of orders - now changed its private enterprise character by virtue of those government orders. Doering, Trans. G. P. 13570, E. P. 13238. This was the reason why, eventually, Doering, Krause and Schnitzler gave notice that they wished to be released from the Executive Board after Herr Kuenzler left Berlin for a protracted period of time and appointed a deputy who was not even known to the Executive Board, without Herr Kuenzler asking or even informing the Executive Board prior to his departure. Thus, any co-ordinated control became impossible, and those three officials now jointly handed in their resignation in writing. Doering, Trans. G. P. 13572, E. P. 13240.

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The fact that the I. G. granted a loan of RM 10,000 to the association upon Schnitzler's instigation during the war, cannot be construed as an incriminating act. Doering confirmed that this was only done in order to tide the association over temporary difficulties, because it was quite natural that a company of that type could not get sufficient orders during war time. To this must be added that, in the same manner, other firms also gave temporary loans because of purely economic reasons, such as AEG and Siemens, which gave RM 5,000 each. Doering, Trans. G. P. 13571, E. P. 13239. Just as erroneous is the prosecution assertion according to which Josef v. Puttkamer went to Shanghai as an official of the Association for Sales Promotion on a special mission for that company, that he sent reports to Herr von Schnitzler, and that he engaged in espionage activities. To contest and refute this claim, I have submitted

conclusive proof showing that Puttkamer was at no time an I. G. employee, Schnitzler Exh. 192, - 193, Book XI, E. 51/53, and that he was in the company's employ only for a few months without having had any connections with the OKW, Exh. Doering, Trans. G. P. 13572, E. P. 13230, that he did not go to Shanghai on behalf of the company because he, as Dr. Doering stated, had already ceased employment with the company, Doering, Trans. G. P. 13572/3, E. P. 13230/1, that he did not "apparently send reports", as the prosecution asserts, but that he wrote only one personal letter to Schnitzler without including any reports, Pres. Exh. 938, Book 49, G. P. 177, E. P. 130, that Doering and Schnitzler did not know what Puttkamer was doing in Shanghai (and besides, the prosecution did not prove anything in this respect),

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Doering, Trans. G. P. 13573, E. P. 13241, that the only fact the prosecution was able to prove was that Puttkamer, after the unconditional surrender, i. e. after 8 May 1945, allegedly worked for the Japanese Army. Pros. Exh. 937, and 939, in Book 49, G. P. 10 and 104, E. P. 132, and 130.

Accordingly, the High Tribunal removed Document Exh. 939 from the evidence during the session on 3 May 1946. Trans. G. P. 13576, E. P. 13244.

Contrary to my motion, Exh. 937 was not crossed off the record because, at the beginning, the date 8 May 1946 is also mentioned. However, this document does not constitute any evidence against Schnitzler because no connections could be proved with Schnitzler. Also, Major Bloch's letter of 13 April 1943 after the Major had meanwhile been promoted to Lt. Colonel, which was addressed to Schnitzler, as well as the latter's reply of 17 April 1943, are just as unsuitable as circumstantial evidence.

Pros. Exh. 940, II 650, Book 49, G. P. 107, E. P. 141.

The very contents of those two letters show that this correspondence was nothing but a mere act of politeness. Besides, I also have proved this fact through Albrecht Focke who testified that Bloch's letter - as far as he knew Bloch - was only an expression of polished manners of which he was a past master. He added:

"Herr Bloch wrote such letters to numerous leading persons in government and industry, especially if official - sociable relations were concerned, when he resigned from the Counter Intelligence Service. I do not know of any particular reason for gratefulness towards me on the part of Herr van Schnitzler."

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Schmitzler Exh. 41, Doc. 37, Book II, p. 60. The very same document also shows how meaningless the connections between Bloch and the Association for Sales Promotion really were, for Focke states: 'I am not familiar with the name 'Association for Sales Promotion' in connection with the Counter Intelligence Service or in connection with the name van Schmitzler.'

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Altogether, I cannot even recall such an association. Colonel Bloch did not leave any information for me in this respect." Schnitzler Exh. 41, Doc. 37, Book II, P. 68. Ad. Pros. Exh. 936, NI 1322, Book 49, G. P. 175, E.P. 128, see Testimony by Dr. Overhoff on 26 January 1948, Trans. G. P. 5639/42, E. P. 5795/8.

This shows that, as a rule, the I. G. was opposed to having someone travel abroad on behalf of the OKW and would not permit such a person to travel abroad through I.G. intervention, nor did this happen at any time. Overhoff's testimony further shows that, if at any time the OKW gave an order to an employee abroad, this was done without knowledge of the I. G., and during the war the I. G. always endeavored to prevent any such occurrence if it did learn about such measures. In this connection, it is quite interesting to point out that Herr von Heider told Dr. Overhoff the following as to this point:

"How is this possible at all? I thought there was an agreement between the I. G. and the OKW according to which I. G. employees were not to be called in for such tasks." Trans. G. P. 5643, E. P. 5799.

The witness von Heider confirms this OKW agreement in the same way and with the following words:

"In my activity as Counter Intelligence and Security Official for the I. G. administration building on Gruenerplatz, in which position I was not under Dr. von Schnitzler's supervision but was merely obliged to report to him, Dr. von Schnitzler approved of my attitude in all respects, namely, that by referring an agreement between the OKW and the I. G. I decidedly opposed a measure according to which the I. G. organization was to be used for Counter Intelligence work, especially as far as its foreign repre-

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sentations were concerned." Seannitzler Exh. 42, Doc. 36, Book II, p. 70, see also in Particular Affidavit Dr. Frank Pable, Seannitzler Exh. 191, Doc. 205, Book III, p. 47.

In conclusion I would like to refer to my Final Plea,
numbers 15/17.

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Moreover, I believe that in consideration of this entire matter the prosecution is proceeding from false legal premises. Even if it ^{had} proven that in any one case one or several of the confidential agents of the OKW abetted by the I.G. had gone abroad, then this could not be regarded as a punishable act. In all countries the competent army offices maintain an intelligence service and in this connection make use of the industrial firms, naturally, in particular, during a war. Even if the prosecution had proven that in this way a spy had gone abroad with the help of a defendant --- as a matter of fact the prosecution has not proved this fact --- then according to international law there would still be no basis for a punishable act. In addition to this should be added the fact that the prosecution has not even proved that the Wehrmacht office issuing the assignment, in this case, e.g. Major Block, was a participant in a war crime as defined in count I of the indictment, much less that one of the defendants was informed of this matter, and, in the knowledge of all these facts, participated in this crime.

9. e. New Order.

The statement of the indictment:

"FARBEN explained that a major economics sphere would be shaped in Europe which will, upon conclusion of the war, have the task of organizing the exchange of goods with other major spheres in competitive markets."

Indictment, Section 79 of text.

and:

"The immediate short range objective of the New Order was to integrate European production with the German war machine and with economic weapons combat the United States. "

Indictment, Section 80 of text.

and:

"The I.G. Farben's lust for conquest and power was forcibly reflected in its plans for the New Order."

Trial Brief, pg. 74.

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These allegations have in essence already been refuted by the prosecution documents in connection with the testimony of the witness, Ministerialdirigent Dr. Schlotterer, who was the expert in charge of the New Order with the Reich Minister for the Economy. To avoid repetition may I refer to the statements made in my final plea to section 18 of the test (page 25-29).

The prosecution material and the Schlotterer testimony have shown the following :

aa) The so-called "plan" is not, as the prosecution would have us believe, a brainchild of the I.G. Farben but rather a Government plan "New Order" which originated with the Reich Ministry for the Economy and was in no way connected with the waging of an aggressive war or problems of armaments. Armaments constituted a matter for the OKW, which, however, had no part in this particular problem. The Reich Ministry for the Economy had nothing to do with armament questions.

Transcript, Germ. pg. 5901/6 Eng. pg. 5856/

See also Pros. Exh. 1051, Vol. 51
Germ. Vol. 51, Part II b,
English pg. 150.

Letter to Reich Ministry for the
Economy: "
"The planning measures instituted by
you."

bb) In 1940 it was believed in the Reich Ministry for the Economy that peace negotiations would be brought about. For that reason it was decided to collect material in preparation for the peace negotiations. The Reich Ministry for the Economy wished to avoid these economic questions, as was the case with other former cases, falling into the hands of a politically and national-socialistically minded Reich Commissar upon the wishes of Hitler, Goering or Ribbentrop.

Transcript, Germ. pg. 5895/6, 5899/5900
Engl. pg. 5849/50, 5854/5.

The Ministry for the Economy turned to Economic Groups and private business in order to collect such material.

Transcript, Germ. pg. 5902, Engl. pg. 5866/7

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Thus this proves that I.G. in compliance with the wishes of the Ministry furnished such material.

Pros.Exh.1049,Vol.51,Germ.pg.38,Engl.pg.130
("definite inquiry of the Reich government" for
"future peace treaty,")

and that not only the I.G. did this but numerous firms just as in other former cases,

See also Schnitzler Exh. and Doc. 5,Vol.II,pg.58, where the Minister turned to the Testing Bureau for the Chemical Industry (Pruefungsstelle Chemische Industrie) and at the same time to 11 German Firms including I.G.Farben,

that the so-called "Expansionist idea" (Grossraum-Gedanke) was not the idea of the I.G.Farben but that of the government,

that this had nothing to do with an "integration of European production with the German war machine " because the ministry did not require the material for time of war but for the time which peace negotiations were being discussed, in other words after the war,

and that in consequence thereof the working out of such material by the I.G.Farben did not reflect the I.G. Farben's lust for conquest and power.

cc) Plans for aggressive wars were kept secret; the New Order was not kept secret. Large press conference, distribution of hundreds of pamphlets at home and abroad.

Transcript, Germ.pg.5908, Engl.p.5862

dd) The New Order had no practical results because it constituted peace -time planning and therefore in 1942 it was entirely stopped because Hitler carried on no peace negotiations.

Transcript, Germ.p-5908/9, Engl.p.5862/3.

ee) One went on to discuss earlier cartel ideas from the pre-war period; cartels, contrary to the opinion of the prosecution, do not constitute economic weapons of war.

Transcript, Germ.pg.5909/11, Engl.pg.5863
65

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ff) As to the statement of the prosecution that the I.G. Farben wished to combat the United States with its economic weapons: cartels, capital participations and technical knowledge, see

Schlotterer, Trans. Germ. p. 5907/8, Engl. p. 5862 and moreover: why should it be prohibited to combat another nation "with economic weapons?"

gg) this work extended also to countries which were neutral, that is to countries allied with Germany, in other words this did not concern an aggressive war.

See Pros. Exh. 1049, Vol. 51,
Germ. p. Engl. p. 130.

Pros. Exh. 1051, Vol. 51, Germ. part II b,
p. 2, Engl. p. 155.

In summary: The plan to prepare peace negotiations is the exact opposite of a plan to prepare aggressive wars.

See also Exh. 1048, Vol. 51, Germ. p. 35, Eng. p. 128
("Reorganization of economic ties in Europe after conclusion of peace negotiations")

10. f. Further the prosecution cites the appointment to Military Economy Leader and the setting up of a Military Economic Leader Corps.

Trial Brief, p. 92

Pros. Exh. 491, NI-4623, Vol. 22
Germ. p. 113, Eng. p. 90

and

Affidavit arlimont, Pros. Exh. 490,
NI-3512, Vol. 22, Germ. p. 98, Eng. p. 75

It should be stated in opposition to this:

Both prosecution documents concern only the Military Economy Leaders who were appointed by the military. However, Schnitzler was appointed Military Economy Leader by the Reich Minister for the Economy, and moreover, not until 1942 and not upon the behest of the I.G. but upon the initiative of the Chamber of Commerce in Frankfurt. This appointment was a "natural result of the economic position of Herr von Schnitzler" it was purely "a distinction".

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See affidavit Prof. Luer, President of the Chamber of Commerce in Frankfurt, Schnitzler exh.43, Doc. 39, Vol. II, p.73 as well as

Affidavit Herbert Boldt, former Ministerialrat in the Reich Ministry of the Economy, Schnitzler Exh. 194, Doc. 208, Vo. XI, pg.54.

Any special activity was not connected with this position. Nor was such a position incorporated in a board or an organization; see above affidavits of Luer and Boldt.

Similarly the prosecution witness Warlimont had to admit under cross-examination:

"I always thought that Wehrwirtschaftsfuehrer (Military Economy Leader) was merely a title."

Transcript, Germ. p.2306, Eng.p.2313.

11. g. From 1934 the Reich Group Industry (Reichsgruppe Industrie), which represented all of Germany industry, and Economic Group Chemical Industry (Wirtschaftsgruppe Chemische Industrie) exercised governmental powers in the planning of German mobilization for war.

Indictment, Section 35

Schnitzler was a member of the large advisory council of Reich Group Industry, deputy chairman of the Economic Group Chemical Industry and member of a smaller advisory council (not the small advisory council of the Reich Group; both positions in Economic Group Chemistry terminated in 1941.) He was never active as deputy chief of Economic Group Chemistry because the chief in each case exercised these functions himself. The smaller advisory council of the Economic Group had only advisory functions, see

"Affidavit Dr. Ehrmann, Exh. Schnitzler 188
Doc. 198, Vol. XI, P.34.

"On 27 November Schacht as deputy minister for the economy issued an decree the practical effects of which were to invest the Reich Group Industry with governmental powers with respect to the German mobilization for war."

Trial Brief, p.85 and Pros. Exh. 72, NI-10545 Vol. 4

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These allegations are incorrect. The witness, Dr. Doering described the organization of the Reich Group and the Economic Groups. The Reich Group was not an official Government organization but "an industrial organization just as in the case of the former National Association of German Industry" before 1933.

Trans.Germ.pg. 13449,Eng. pg.13226.

The Reich Group Industry received "neither governmental powers at all or special government powers for the German mobilization for war." That was, according to my recollection not even possible "because the Reich Group did not constitute an authority; "neither did it ever "actually" exercise a legally authorized authority to issue orders.

Doering Trans. Germ.pg.13561/2
Engl.pg.13228/9

The allegation of the prosecution is neither proved in any way by Exhibit No. 72 on which it bases its claim; since here the order for the implementation of the law for the preparation of an organic organization of German industry dated 27 November 1934 is concerned. This order speaks only of the internal organization of the Reich Group and the Economic Groups, however, in no way of any kind of governmental powers or even of an official right to issue orders.

The large advisory council is of no significance; it consisted of more than 100 persons. "It convened relatively infrequently, perhaps two to three times a year, if I remember correctly, and essentially considered reports concerning industrial problems."

Doering,Trans. Germ.p.13559,Eng. p.13226

The Economic Groups existed since 1931 and constituted the technical basis of the Reich Group. There was an Economic Group for every individual economic branch. They were, like the Reich Group "Economic Organizations,"and"their chiefs were not officials but industrialists."

Doering,Trans.Germ.pg.13560/1,Engl.pg.13227/1

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As already mentioned above, Schnitzler joined the Economic Group Chemistry and especially the Exhibition and Trade Fair Committee only on the basis of his special reputation in the field of industrial advertising and exhibition and Trade fair matters.

In this connection it is of significance that Doering expressly confirmed, according to his knowledge, that at no time were military plans of aggression on the part of Hitler known in the Reich Group either before the war or during the war and that especially Schnitzler at no time could have known anything of such plans of aggression. The witness, added :

"That I can say with certainty since knowing the attitude of Herr v. Schnitzler such statements would have been indelibly imprinted on my mind. I met Schnitzler on many occasions both before and during the war, on business matters as well as privately. I know of his numerous international connections and am acquainted with his attitude on international economy. During the entire duration of the war there was hardly ever a discussion during which he did not express his regret about the war and his anxiety concerning the conditions of international industrial connections which were becoming worse from year to year. I consider it tragic that this man of all people charged with aiding and abetting plans for aggressive war."

Trans.Germ.pg.13575,Eng.p.13409

The prosecution hopes to impute particular political significance to the Economic Group Chemistry in that it claims that the chief business leader of the Economic Group, Dr. Ungewitter had knowledge of the aggressive war which Hitler intended to wage against Poland. It even goes farther and alleges that Ungewitter informed Dr. v. Schnitzler accordingly and the latter in turn informed the I.G.Farben.

First of all it is completely improbable that the business leader of one of the many Economic Groups had received knowledge of Hitler's plans which the latter made known only to the highest military leaders in a secret session held on 23 May 1939 ,

see key document L 79-USA 27, Schnitzler Exh. and Doc. 27, Vol. I. P.40,

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where it should be noted that the Economic Group Chemistry did not constitute a governmental authority but an industrial organization and that Ungewitter was not even the head of this Economic Group but only the business manager and, as mentioned, that even in the Reich Ministry for the Economy or in the Reich Group Industry such plans had not become known.

see testimony Dr. Schlotterer, Trans.Germ.P.5916
Engl.P. 5879, and Dr. Doering.

On the other hand, it was simple to make this allegation because Ungewitter is no longer living. The prosecution could not even submit the proof indirectly through the closest colleague of Ungewitter, the deputy business leader Dr. Ehrman who obviously knew nothing of this matter originally. For that reason the prosecution turned to Dr. v.Schnitzler. It took a statement which had not been made under oath and an affidavit of v. Schnitzler from 1945 and showed these to Dr. Ehrmann on 13 March 1947 for the reason that there it stated that Ehrmann had taken part in this conversation; in this way it obtained an affidavit from Ehrmann with a nebulous statement which reflected hardly more than Ungewitter's fears and suspicions, see

Pros.Exh.500,NI-4954,Vol.24,
Germ.p.20,Engl.p.16.

Reinforced by this affidavit of Ehrmann of 13 March, it had five^{days} later, that is on 18 March 1947, von Schnitzler confirm his old statement and his old affidavit from 1945 exploiting the poor condition of Schnitzler in March 1947 as proved by the testimony of Dr. Ilgner, see

Pros.Exh.40,NI-5196,Vol.16
Germ.p. 109/133.

In spite of this coercion, Schnitzler made certain qualifying statements in this affidavit to the effect that it appeared doubtful to him whether Dr. Ungewitter had positive knowledge and whether he made positive statements. However, more important is the fact that Dr. Ehrmann as prosecution witness under cross-examination on 7 October 1947 had to admit

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his memory was not refreshed concerning these discussion until the statements of Schnitzler from 1945 were submitted to him.

Furthermore, Ehrmann admitted with reservations:

"I can state with certainty that he (Ungewitter) did not pass on any sort of official information of this nature (namely that decisions concerning an aggressive war were already de facto) up to the end of war."

He confirms further that the statements of Ungewitter represented only his "personal fears and presumptions."

Cross-examination Dr. Ehrmann, Trans. Germ. p. 1709/30
Eng. p. 1724/44.

However, none of this constitutes a case - in - chief but at best an incident which demonstrates the clever tactics of the prosecution.

12. h. In its case-in-chief the prosecution accorded great importance to those documents which concern the internal organization of the I.G. Farben, in particular the K.A. (Commercial Committee), the F.A. (Dyestuffs Committee), and the Verkaufsgemeinschaften (Sales Combines). The prosecution did not bring forth any substantiated charges in which manner these boards purportedly co-operated in the planning or preparation for aggressive wars. To eliminate any shadow of a doubt respecting this point the defense clarified this subject during the cross-examinations of the prosecution witnesses Dr. Kuepper and Dr. Frank-Fahle. Dr. Kuepper confirmed that no member of the Commercial Committee or of the Dyestuffs Committee had "even the slightest suspicion or clue" that an aggressive war was contemplated or that preparations were supposed to be made for an aggressive war. In so far as measures were discussed at all in the K.A. and in the F.A. with respect to a war, these were only of a defensive nature and were to be applied only "in case", in other words these were precautionary measures "which one customarily takes in all nations of importance." Also, the treatment of the so-called M-questions (mobilizations questions) in the K.A. and the F.A. did not serve a possible aggressive war but only the maintenance of the sales business from the standpoint of personnel in spite of possible demands by the Wehrmacht. It was the desire of the I.G. Farben to keep people out of the Wehrmacht to the greatest extent possible

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particular in the field of dyestuffs, which in itself was not essential for a war.

Trans.Germ.p.1927/28,Eng.p.1937/8.

Likewise the prosecution witness Dr. Frank-Fahle emphasized specifically under cross-examination that the treatment of the mobilization questions in the K.A. did not initiate with the latter but with the Ministry for the Economy and the staff of General Thomas and that the I.G.Farben could not have avoided handling these questions.

Trans.Germ.p.2000/1,Eng. p.2011/12

The only actual fact which the prosecution has proved in its statements concerning the internal organization of the I.G. Farben and the activity of its boards is that the I.G. Farben was a large concern with a well -conceived and very effectively managed organization with extensive interests, and idea which Judge Morris already mentioned at the time when exhaustive evidence consisting of minutes from the K.A. was submitted on the eight day of the trial (10 September 1947

Trans.Germ.p.589/96,Eng.p.722 ff.

1. Therewith the most important of the circumstantial evidence of the prosecution is refuted. In addition I want to summarize briefly some of the circumstantial evidence in the following which omphatically speak against any knowledge on the part of Schnitzler of an aggressive war,

aa) Schnitzler did not raise the Swastika flag at the I.G.in March 1933.

Schnitzler Exh. and Doc. 11, Vol.I,p.14

bb) One cannot expect that Schnitzler recognized Hitler any more than Churchill, see

Schnitzler Exh.and Doc.12,Vol.I,p.16

" " " " 14," I ,p.23.

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cc) Differences of Schnitzler's with the party representative of the Shop Stewards' Council in the I.G. building in Frankfurt,

Schnitzler Exh.42,Doc.Vol.II,F.70
and with Gauleiter Sprenger; these differences were of such a grave nature that the Gauleiter intended "to clean house in the I.G.following the end of hostilities and to "purge" those directors,among them Herr v. Schnitzler, who did not follow the Nazi party line."

Affidavit Dr. Krebs,Schnitzler Exh.162
Doc. 159,Vol. IX,p.37,
as well as an affidavit submitted by the prosecution in evidence,

Exhibit 330, NI-5184,Vol.12,Eng.p.91
There is shown from the evidence submitted by the prosecution itself (Section 27 of the document), that Gauleiter Sprenger requested the removal of Dr. Schmitz,Dr.v. Schnitzler and Dr. Ter Meer, see also affidavit Prof. Luer,

Schnitzler Exh. 43,Doc.39,Vol.II.P.73
dd) Schnitzler's close international connections:
World's Fair Barcelona 1929,International Chamber of Commerce Paris , member of the Exhibition and Trade Fair Committee.

Schnitzler Exh. 36, Doc.32,Vol.II,p.46
Testimony Dr. Kuepper,Trans.Germ.p.6043/44,
and 6047/8, Engl.p. 5988/9 and 5991/2.,
Schnitzler Exh. 186,Doc.196,Vol.XI.P.26.

ee) Anglo-German Industrial Conferences in Godesberg in March 1939.

Schnitzler Exh. 48,Doc.44,Vol.II,p.88,
(joint declaration of the Reich Group and the Federation of British Industries).
Schn.Exh. 187,Doc.197,Vol.XI,p.29.
Kuepper,Trans.Germ.p.6047,Eng.p.5991.

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ff) Schnitzler is the father and supporter of the international cartel agreements with Switzerland, France, England and Poland.

Schn.Exh.205/7 Doc.180/2, Vol.X, p.11/61
Kuepper, Trans.Germ.p.6035, 6040,
Eng.p. 5980, 5985.

gg) Hitler's constant declaration for peace.

Doc.Book Dr. Boettcher (documents concerning German foreign policy, submitted as proof for the ignorance of the German people of Hitler's plans, to wage aggressive wars, Parts I and II.).

hh) Joint peace declarations of Chamberlain and Hitler, Munich on 30 September 1938.

Schn.Exh.and Doc.15, Vol.I, P.25

ii) I.G.'s exports in the dyestuffs field amounted to 62.5% of the total dyestuffs production.

Schn.Exh.31, Doc.28, Vol.II.p.33

kk) I.G.'s reinsurances were essentially covered in England and were neither recalled at the outbreak of war or transferred to foreign countries or to Germany.

Schn.Exh.32, Doc.39, Vol.II, p.35.

Testimony Kuepper, Trans.6048 and 6051 Germ.
Engl. p. 5992 and 5995.

ll) Schnitzler had nothing to do with the so-called key documents.

Schn.Exh.and Doc.16-20, Vol.I, p.27/96.

mm) In 1939 Schnitzler traveled abroad to Yugoslavia without any apprehension and had to be recalled by telegram when war broke out; he was, in other words, at the time of the key document of 22 August 1939 and at the time of the decisive days before the outbreak of war not in Germany.

Schn. Exh. and Doc. 22-24, Vol. I, 146/52,

nn) According to the Marshall report the OKW had no extensive plans for aggression; The Reich Ministry for the Economy and the Reich Group Industry did not even have knowledge of such, much less Schnitzler.

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Schnitzler Exh. and Doc. 25, Vol. II, p. 1

Testimony Schlotterer for Reich Ministry
of the Economy

" Doering for Reich Group Industry

This chain of circumstantial evidence continued its merry way.

14. k) The prosecution submitted neither direct or even indirect evidence and attempted therefore to assist itself with Schnitzler affidavits. To avoid repetition may I refer to my final plea, Section 19 of the text, p. 29/37 and the statements in my motion of 28 May 1947 and at this point only summarize the evidence.

aa) In German trial law affidavits are accepted only in civil trial law and then only in trials where no witnesses may be heard, for example trials concerning interim injunction

bb) In American trial law affidavits of a defendant are inadmissible on the whole and especially as an admission if the affiant cannot be called to the witness stand.

Schn. Doc. 200, Identity No. 26, Vol. II, p. 11

cc) "Neither may anyone be compelled in any criminal trial to appear as a witness against himself." (see 5th Amendment to the American Constitution) and Federal Criminal Law by William Atwell,

see Final Plea. page 32,

further: Articles of War 1924, reprinted in "Manual for Court Martial US Army. p. 24:

"No witness shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him, or to answer any question not material to the issue when such answer might tend to degrade him."

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dd) Neither in 1945 or in 1948 was Schnitzler's attention called to the fact, in accordance with American principles, that he was a defendant or was supposed to be a defendant; on the contrary he was interrogated expressly as a witness.

Schn.Exh-28, Doc. 26, Vol. II, p. 12,
" " 182, " 223, " XIII, p. 23, 36, 32, 38.

ee) In 1945 and 1947 Schnitzler was denied legal counsel.

Schn.Exh. Doc. 26, Vol. II, p. 17.

Mr. Sprecher: "No right to legal counsel". On the other hand: "the Federal rules of criminal procedure" concerning draft of the law of 1945, as far as I know, has become law in the interim. "Right to legal counsel, " see

Final plea, p. 33/34

These provisions also refer to the previous points.

ff) Schnitzler did not make the affidavits of 1945 and 1947 voluntarily but under psychological coercion, that is, upon the duress of the interrogators or the prosecution.

Proof

1. Schnitzler's attention was called to the duty of every German citizen to testify before representatives of the Allied powers and was referred to the punishment for perjury or refusal to make such testimony, see

Schn. Exh- 28, Doc. 26, Vol. II, p. 13
(Mr. Sprecher: "Right of the occupation power) " and p. 17: (Mr. Sprecher: "Duty in accordance with the laws of occupation to co-operate as a citizen of the occupied country with the occupation authorities.")

Inadmissible coercion because of inadmissible summons upon order No. 1 of the American Military Government and proclamation No. 2 of the Control Council, Sec. 45.

Schn. Doc. 201, Identify No. 27, Vol. II, p. 11 f & g.

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see decision of the high tribunal in the I.G.
trial of 24 May 1948 regarding Schmitz affidavit
Pros. Exh. 334.

2. Inadmissible Coercion 1945:

Testimony of the witness Haeffliger on 11 May 1948,
Trans. Germ. p. 14631/49, Eng. p. 14293/307 and

Affidavit Frau v. Schnitzler, Schn. Exh. 30,
Doc. 27, Vol. II, p. 28.

(Note: Mimeograph copy illegible here)

Affidavit Dr. Kuepper, Schn. Exh. 223,
Doc. 225, Vol. XIII, p. 42

3. Inadmissible Coercion 1947:

Interrogation by Mr. Sprecher of 19 February 1947:

Schn. Exh. 28, Doc. 26, Vol. II, 13/19

Interrogation by Mr. Sprecher of 18, 19, 20 and 22
March 1947:

Schn. Exh. 182, Doc. 223, Vol. XIII, P. 23/41,

Cross-examination Mr. Wolfssohn by me on 10 May
1947, Trans. Germ. p. 14491/522, Eng. p. 14117/50.

(During his interrogation Schnitzler broke out in tears.

Schnitzler's request for time to reflect on his statements was
refused).

Affidavit Dr. Max Ilgner, 28 May 1948,
Schn. Exh. 224, Doc. 226, addendum to my motion
of 28 May 1948.

As a result of his special treatment in custody
and the interrogation by Mr. Sprecher in March of 1947
Schnitzler "broke down completely" and was in a "mentally
depressed condition."

Accordingly with my motion of 28 May 1948 I
again requested that all the affidavits and statements which
were submitted by the prosecution and which were enumerated
respectively in my motion, some originating from 1945, others
from 1947, be dropped. In the event the affidavits were not
dropped

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the affidavits and statements in any event were to be considered as having no value as evidence in view of the conditions described.

Thus I can terminate my statements with respect to count I of the indictment with regard to aggressive war.

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I. Indictment Count II
(Spoliation)

15. The Prosecution's Theory

1. The actions described in Count II of the indictment which refer to "spoliation" constitute an integral part of the planning, preparation, introduction and waging of aggressive wars and the invasions of other countries. According to this theory of the prosecution spoliation is duly characterized as a crime against peace and as such declared subject to punishment.

Further, spoliation is defined as a war crime and a crime ^{against} humanity.

Indictment, Sec. 84
Prosecution in Trans. Germ. p.2914,
Eng.p. 2894.
Trial Brief, of 12 December 1947, Germ.
and Engl. p. 1.

2. This is pure argumentation. The prosecution submitted no evidence of any kind to connect spoliation with aggressive war. In addition this theory itself is nullified in that these cases from the pre-war period are eliminated according to a decision of the court. In section 86 of the indictment the prosecution concerns itself with the participation of all defendants in a "comprehensive plan for spoliation" of the occupied territories. This spoliation purportedly had the purpose of strengthening Germany in its aggressive wars and to assure German supremacy in the economic sphere of the European continent. In this connection it states in section 87 and 88 almost verbatim general facts from the basis of the IMT judgment referring to the directives of Goering of 19 October 1939 on. See Germ. pg.268/69, Eng. p. 239/240 of the official transcript of the session of the IMT trial.

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3. The prosecution has submitted no document from which one may adduce a plan of systematic spoliation in which any of the defendants might have participated.

Document PS 1155, Exh. 1239, Vol. 57, P.1 constitutes no proof because it is not known to any of the defendants. (Top military secret). In section 4, it is true, Goering speaks of the fact that efforts of German industry to take over already at that time plants in the occupied territory must be vigorously rejected. If this statement is true then it can be seen that no joint plan existed between industry and the government.

In section 89 of the indictment it is alleged that the I.G. Farben had the main role in Germany's program to enrich itself through conquest and did everything, with the help of armed might, to acquire the chemical industries of Austria, Czechoslovakia, Poland, Norway, France, Russia and other countries.

Actually the leading German industry had no desire to enrich itself through enemy private property. Proof: letter from the Reich Economic Chamber to the Reich Minister for the Economy,

Schnitzler Exh. 214, Doc. 190
Vol. X, p. 95

where it states verbatim on page 97:

"The leading enterprises of German private industry therefore, do not intend for the reasons given to assure itself of a head start in private industry in German and international competition by racing for possession of enemy private property at a time when Germany is fighting for its life."

The allegation concerning acquisition of the chemical industry requires no refutation because it refutes itself through its propagandistic, inordinate exaggeration, (Actually, this amounted in the case of Poland and France, for example, to only about 3% to 5%).

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The Theory of the Defense

Introductory Statement: To avoid repetition may I refer to my final plea with respect to the subject of spoliation from legalistic considerations:

- a) re Spoliation in general to Section 20-24 of the text, (P.37-47) and section 33-38 of the text (p.60-71)
- b) re Francolor specifically to section 25-27 of the text, (p.47-52),
- c) re Poland and Alsace-Lorraine to section 28-32 of the text, (p.52-60).

F R A N C O L O R .

16.

I. Following the collapse of France and the armistice on 22 June 1940 I.G.Farben is desirous of renewing the old connections which it formerly had with the French dyestuffs industries:

The dyestuffs factories in France following the first World War were built up according to the potential of the German branch factories in France. During and/or after the First World War, France confiscated and expropriated these branch factories which belonged to the predecessor firms of the I.G.Farben.

Exh.1245,NI-5901,Vol.57

Germ.p.75,Eng.p.64.

Testimony of the witness Kuepper

Trans.Germ.6033-6034,Eng. p.5979/80.

Seizing of I.G.Farben patents and production processes before conclusion of the peace treaty without paying indemnification.

Testimony of the witness Kuepper,

Trans.Germ.p.6035 Eng.p.5981.

Conclusion of the following agreements:

a) Gallus agreement in 1920. This agreement was rescinded unilaterally and illegally by the Kuhlmann firm in 1924 which later became a participant in Francolor.

Testimony Kuepper,Trans.Germ.6036,
Eng. p. 5982

Schnitzler Exh. 203,Doc. 178,Vol. X,p.

Schnitzler Exh. 204 Doc.179,Vol.X,p.4

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- b) German - French cartel agreement of 27 April 1929 with the previous agreement of 15 November 1927.

French-German-Swiss agreement of 27 April 1939 (Tri-partite agreement)

Schnitzler Exh. 205, Doc. 180,
Vol. X, p. 11-37.

- c) Agreement between the Kontinental Farbstoff-Kartell and the Imperial Chemical Industries Ltd. (Four-party agreement) of 26 February 1932

Schnitzler Exh. 206, Doc. 181,
Vol. X, p. 38-48 .

- d) Agreement between the Polish group (Boruta and Wola) and the tri-partite group (France I.G. Farben, and Switzerland).

Schnitzler Exh. 207, Doc. 182,
Vol. X, p. 49-61.

In this latter agreement it should be noted that the dyestuffs factories located in Poland, Winnica and Fabianice, appear as parties of the tri-partite group.

The idea to conclude cartels with foreign dyestuffs industries arose from the increased competition in the international and, in particular, in the European dyestuffs market. Considerable difficulties were met in the dyestuffs business. The cartels were to make impossible the entering of a cartel partner's domain with non-cartel type methods, e.g. price undercutting, in which cases however, it was still permissible to enter new fields. The cartel system, as organized in the above mentioned agreements, proved its worth. Since the French clearly lagged behind the other cartel partners from the technical standpoint as well as from the standpoint of sales organization, considerable difficulties were encountered with them continuously.

Testimony of the witness Kuepper,
Trans. Germ. p. 6035, 6038-6039,
Ing. p. 5983-5984.

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All cartel agreements mentioned above show that I.G. Farben was leading in the dyestuffs field as early as in the twenties, although at that time, especially at the time where the agreements were concluded with France, it was not Germany that was leading in politics but foreign countries, in this particular case, it was France. It should be noted that even in the case of the agreement with the French dyestuffs industry technical assistance plays a part and that I.G. Farben have stronger representation in the business management as well as in the Board than the French group. In addition, this agreement includes a long list of foreign countries to which the French group could not export and vice versa. The economic leadership, in addition, follows from the distribution of the quotas.

During world war II all cartels were dissolved. Switzerland served notice and the ICI withdrew from the cartel.

Testimony of the witness KUEPNER,
Germ.Tr.p. 6052, Encl.Tr.p. 5991/5998.
Exh. 1255, EI-6845, Vol. 58,
Germ.p. 45, Encl.p. 28.
SCHNITZLER Exh. 6, Doc. 6, Vol. III, p. 8 to 15.

Opinion by the witness Dr. KUEPNER as to
the reasons why the German-French cartel
of 29 April 1929 could no longer apply.

Through the cancellation of the agreement by the Swiss and the British, essential elements of the cartel structure had been lost. It was bound to collapse. In addition, the French violated the cartel agreement in a number of cases. They had entered markets which did not belong to their territory. They had to a great extent practiced price cutting. These violations of the agreement constituted an infraction thereof according to Dutch law which applied to, or was to apply to, the interpretation of the German-French cartel agreement.

Testimony by the witness KUEPNER,
Germ.Tr.p. 6072, Encl.Tr.p. 6017.

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It was necessary after the armistice to find new forms for the continuation of the old cartel relations with France, which then in connection with the entire Franco-German transaction materialized in the final agreement.

Testimony of the witness Dr. KUEPPER,
Germ. Tr. p. 6052 and 6055, E. Tr. p. 5997, 5998
and 5001.

Exn. 1255, NI-6845, Vol. 58, Germ. p. 41, Engl. p. 35.

After the victory over France the Reich Ministry for the Economy held the view that such international cartels as had proved good could be retained, that it should, however, be investigated whether certain cartels had not become superfluous. The idea always prevailed that cartels were a voluntary combination and adjustment of most different interests.

Testimony of the witness Ministerialdirigent
SCHLOTTERER, Germ. Tr. p. 5909 and 5911,
Engl. Tr. p. 5864 and 5866.

The witness ter MEER makes the following statement about I.G. Farben's ideas which led to the negotiations about the establishment of the Franco-German company:

"The ideas of Farben were based on and directed towards the re-establishment of international collaboration in the dyestuffs field after the end of the war. We knew that as a result of the war serious difficulties would arise. For instance, we expected serious losses in various export fields. Since the situation of the French dyestuffs industry had already become difficult during the last pre-war years, we wanted to clear up and stabilize our relations in the interest of both parties; clash of interests, as they had happened in the past and particularly during the 1930's, were to be avoided in the future. The prerequisite for this was the consolidation of the French dyestuffs producers into one firm and the rationalization of their production. That could only be done with the technical assistance of Farben. Farben, however, would be ready to grant such an extensive technical assistance only if they would be able to exert a certain influence upon the new firm by participating in their capital."

Germ. Tr. p. 13299/13300, Engl. Tr. p. 13005.

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II. The period from 22 June 1940 till November 1940.

In its Trial Brief, part II, sec. 29, the Prosecution asserts to have shown that I.G. Farben had enforced its claim to participation in the entire French dyestuffs industry with the aid of elaborated and effective tactics and had forced the French to go down on their knees. The case-in-chief of the Defense shows that these assertions of the Prosecution are not tenable. It is not denied that the negotiations which finally led to the conclusion of the Franco-German agreement were opened immediately after the armistice. Contrary to the assertions of the Prosecution, which were not proved, the reasons are as follows:

1. First of all, there existed no legally binding obligation for I.G. Farben whatever time to take up negotiations with the French.

2. The Prosecution document

Exh. 1246, MI-6727, Vol. 57,
Gorn. p. 90, Encl. 1.77

shows that the head of the economic delegation with the armistice commission, Envoy HEMMEN at the beginning of August 1940 received a note from the French general HUNTZIGER in which the latter informs him that the directors of the French tar-dyestuffs factories desired to be given an opportunity to confer with the representatives of the German tar-dyestuffs industry. At that time HEMMEN replied to the general that he in principle was willing to comply with the desire expressed by the French, but that he considered the present moment as unsuitable for initiating such negotiations.

3. HEMMEN's reply was in conformity with the decisive Reich offices in Berlin.

Affidavit by Dr. Elmer MICHEL,
SCHNITZLER Exh. 209, Doc. 184, Vol. X, p. 66.

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4. The Berlin central offices and GOERING were opposed to the idea that industry should take an interest in occupied France and its industrial enterprises.

Exh. 1239, FS 1155, Vol. 57, p. 1.

5. The chief of the economic department with the administrative staff of the Military governor of France conjointly with the military governor held the view that the industrial production of the French territory should be put in operation again. His efforts, however, met with great difficulties during the summer months. There were not only disagreements between the views of MICHELS and those held by the Berlin Reich offices, but also within the military government and military offices in Paris. Lieutenant colonel NEEF, Paris Economy and Armament Office, planned the introduction of a general obligation to apply for a permit in order to resume French production.

Exh. 1241, NI-6839, Vol. 57,
Germ. p. 34, Engl. p. 33.

It did progress this far, but it had been ordered that the resumption of production should be subject to a permit from local field headquarters.

of. the MICHELS affidavit referred to above, SCHNITZLER Exh. 209, Doc. 184, Vol. X, p. 66.

6. In the middle of August 1940 the defendant von SCHNITZLER went to Paris together with the I.G. Farben director TERHAAR, in order to explore the situation in France. By his testimony on the witness-stand the witness KUGLER confirms that Herr von SCHNITZLER reported on his trip to Paris on 20 August at a Ka. conference in Berlin. On that occasion SCHNITZLER related that he had found great confusion with the government offices in Paris with regard to the views on France's industrial activity.

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Important industries, as for instance textile industry, were not at all to be set in operation again

GERM.Tr.p.12957-12959,
Engl.Tr.p.12673-12676.

KUGLER confirms the facts as they follow from the documents quoted. It had not been possible to clarify the situation.

At the K. conference of 20 August 1940 a number of gentlemen were chosen and had to go to Paris once again in order to find out what the situation was.

This proves that the competent offices of the government in Berlin, in Wiesbaden and also the regional authorities in France at the beginning did not desire the resumption of production or wished to make it subject to their permit.

As follows from sec.4, the economy division with the military governor did not succeed in creating orderly conditions in France again until the latter part of fall 1940, which would have made it possible to set rolling France's industrial production.

SCHMITZLER Exh.209, Doc.184,
Vol.X, p.66.

The reasons were:

- transportation difficulties,
- location of the French coal fields in the departments, "Nord" and "Pas de Calais",
- destruction of the coal pits in the north area, these areas' being under the competency of the military governor in Brussels,
- discontinuation of coal imports from England and coke imports from Germany.
- splitting up of the French economic territory by the line of demarcation,
- confusion in customs and import regulations.

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Testimony by the witness ter MEER,
Germ.Tr.p.13374, Engl.Tr.p.13045-13046.

Testimony of the witness KUGLER,
Germ.Tr.p.12955, Engl.Tr.p.12783.

SCHNITZLER Exh.209, Loc.184, Vol.X, .67.

The general situation as it prevailed in France after the armistice was thus essentially decisive for the impossibility at that time to start private economic negotiations, which I.G. Farben would have desired from the outset.

Highest public offices were against the immediate resumption of production. The authorities were not sure whether only industries directly essential to the war effort should be set going and whether, for instance, the French textile industry, a main consumer of dyestuffs, should be closed down altogether.

The Prosecution asserts that by exploiting the situation created in France by the defeat, I.G. Farben exercised a pressure on the French firms which later participated in the Franco-German agreement as partners.

Trial Brief Part II, Germ.p.39/40,
Engl.p.38.

The Prosecution bases its thesis on
Exh.1241 and 1242, NI-6839 and 792,
Vol.57, Germ.p.30 and 56, Engl.p.31 and 49.

As regards the form of the Prosecution document 1241, the Defense already protested when this document was submitted,

Germ.Tr.p.2794, Engl.Tr.p.2787.

The document involved is the report on the trip concerning which KUGLER - cf. quotation above - has testified. This report bears no signature and was not initialed by any of the defendants or any official of I.G. Farben.

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The Prosecution infers from Exh. 1242 that the report originates with the I.G. Farben director Dr. TERHAAR. It has, however, not submitted any affidavit by Dr. TERHAAR which would show that he drafted this report. An affidavit by the I.G. Farben director Dr. KRUEGER was included in the Prosecution Volume 57 under NI-10685 - of. Germ. Tr. 1054 and Engl. Tr. 1047 - however, it was not submitted by the Prosecution because it obviously does not feel sure with regard to the authenticity of the trip document.

In the report, Exh. 1241, quite a few persons are mentioned with whom the persons participating in the trip, the defendants MAN and KUGLER, and the I.G. Farben directors GROBEL, KRUEGER and TERHAAR, are alleged to have negotiated. In the course of this trial only the defendants MAN and KUGLER and Dr. GROBEL were examined with regard to this document. Dr. KUGLER and GROBEL testified in conformity that not all persons participating in the trip - the trip in itself is not denied - negotiated simultaneously with the representatives of the German military government mentioned in the report. The Prosecution did not submit any further relevant evidence and did not show whether the statements in Exh. 1241 are true. Dr. KUGLER in his statement pointed out that the report mixed up correct statements with false ones and that it possibly was not the final wording of the report on the trip which he also remembers. At any rate, the testimonies clearly show that Dr. TERHAAR who is alleged to have drafted the report did not participate in all conferences in Paris, Brussels and Wiesbaden.

MAN testimony, Germ. Tr. 10542,
Engl. Tr. 10407.

KUGLER testimony, Germ. Tr. 12970/72,
Engl. Tr. 12685/90.

Dr. GROBEL testimony, Germ. Tr. 12072,
Engl. Tr. 11855/57.

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It follows from Exh. 1241 that the military government in Brussels was informed by the I.G. Farben representatives about the relations between the northern French production and the French dyestuffs production and that this information of the Brussels Military Government was calculated to bring about an expedient organization of the export from the northern French areas which - as stated above - were under the competency of the commander-in-chief for Belgium and North France. The Brussels conferences led to no results in practice so that these documents concerning the trip, on which the Prosecution bases its charge, are of no legal importance for the Francolor case as regards its aspect under criminal law. At that time I.G. Farben had not yet any connection whatever to the French dyestuffs factories and thus no legally binding obligation either to omit or carry out certain actions. At that time the economic situation in France was completely unsettled and it could not yet be anticipated whether it would be necessary to obtain official permits in order to regulate unsettled and disrupted economy. For the legal question decisive in this trial it is only of importance how I.G. Farben acted after it had entered into negotiations with the French dyestuffs factories in November 1940 and a co-operation, the achievement of a common goal, had been agreed upon. Apart from, it must be merely be borne in mind that the first ideas which had originated with the authorities in the summer of 1940 were never followed up or made use of by the I.G. Farben management within the scope of the later negotiations.

In addition, it was not proved that prior to the opening of negotiations with the French in Wiesbaden on 21 November 1940, an indirect pressure was exercised on the future partners to the Francolor agreement by stopping interzonal traffic, that is exports into the unoccupied territory. It was not proved that exports took place at all across the demarcation line which in 1940 in a certain sense represented a new customs border of the

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Reich, and in case they did take place, what quantities of chemical products were destined for factories belonging to the KUHLMANN Konzern. As is known only one of the factories, which later participated in the Francolor agreement, was located in the unoccupied territory, i.e., the St. Clair du Rhone. This was the smallest of the four dyestuffs factories which were merged in the Francolor. The remaining factories Cissel, Villiers St. Paul and St. Denis were located within the occupied territory near Rouen and Paris.

of. Testimony by the witness ter MEER,
Germ.Tr. p. 13447 and 13448,
E.Tr. p. 13159 - 14160.
Exh. 1245, NI-5901, Vol. 57,
Germ. p. 75, Engl. p. 64.

Moreover, the Prosecution has not proved that the largest plant of the KUHLMANN - Konzern, Villiers St. Paul, Paris, was seized by the "Nazi government". This assertion is refuted by the Prosecution document itself

Exh. 1240, NI-8494, Vol. 57,
Germ. p. 29, Engl. p. 30,

in addition, by the testimonies of the witnesses

Dr. ter MEER and Ir. KUGLER,
G.Tr. p. 13378, and 12964,
E.Tr. p. 13049 and 12680.

MICHEL affid vit, SCHNITZLER Exh. 209,
Doc. 184, Vol. X, p. 73.

7.) In addition it must be noted:

- a) I.G. Farben was justified in wishing to wait until the situation in France was settled. This explains the K. minutes of 25 September 1940 submitted by the Prosecution as

Exh. 369, NI-6161, Vol. 57,
Germ. p. 58, Engl. p. 51,

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- b) With a view to the situation in Germany (strictest control of the dyestuffs production, restrictions in the allotment of raw materials, control via the economic group chemistry and the Reich Ministry for the Economy) I.G. Farben was, for the sake of the economy interested in keeping production in France from falling into chaos due to the absence of any plans;

Testimony of the witness KUGLER,
Germ.Tr.p.12970, Engl.Tr.p.12686/87,

since I.G. Farben knew that for economic reasons it would be consulted for the final regulation of the dyestuffs production in France and that in this connection I.G. Farben would have to grant technical support and support by supplying raw materials and auxiliary products.

- c) I.G. Farben depended on the fundamental policy of the government authorities. Subsequently the original opinion of some offices, to which also the subject of Exh.1241 and 1242 is to be ascribed, turned out to be false and in fact no government regulation was necessary.

As already stated above, I.G. Farben was greatly interested in the clarification and stabilization of the situation of the French dyestuffs factories.

ter MEER testimony, Germ.Tr.p.13 299 - 13 300,
Engl.Tr.p.13 005.

The French, as well, were most interested in reaching an agreement with I.G. Farben. Immediately after the armistice agreement had been signed on 22 June 1940 they tried through different channels to reach a co-operation with I.G. Farben. First of all, an attempt was made via the French Government of Marshal PETAIN which by that time had been legally constituted. Later during the conference in Wiesbaden on 21 November 1940 M. LUCHEMIN declared that the "Centrale des Matieres Colorantes" as early as in July 1940 had proposed to the French government a conference with the German dyestuffs industry by the mediation of the

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armistice commission in Wiesbaden, since it had been necessary to come into contact with the German occupation force at the moment when the French plants resumed production.

Exh. 1246, NI-6727, Vol. 57,
Germ. p. 92, Engl. p. 80.

The same Prosecution document shows that, apparently as a result of this recommendation, general HUNTZIGER sent a note to Envoy ~~HELMEN~~.

cf. Exh. 1246, Germ. p. 90, Engl. p. 77.

In August 1940 M. ROSSARD simultaneously asked his assistants ~~RHEIN~~ and VAUCHER to request the armistice commission in Wiesbaden that they be called to Wiesbaden in case problems should be discussed there which refer to the sphere of dyestuffs.

SCHNITZLER Exh. 49, Doc. 45,
Vol. III, p. 1 - 4.

In August / at the end of September 1940 ~~FRASSARD~~ and ~~HEIN~~ tried to contact Dr. KRAMER, the I.G. Farben representative in Paris. On 10 October 1940 ~~FRASSARD~~ asked KRAMER "to arrange for a conference between I.G. Farben and KUEHLIN. The situation of the French chemical industry requires speedy cooperation."

"You must help us and I would be glad to go to Frankfurt."

Exh. 1243, NI-6946, Vol. 57,
Germ. p. 63, Engl. p. 55.

Economic reasons caused ~~FRASSARD~~ - the leading and internationally acknowledged technician of the KUEHLIN Konzern - to seek cooperation with I.G. Farben.

Testimony of the witness for ~~MEER~~,
Germ. Tr. p. 13 296, Engl. Tr. p. 13001/02.

Purely commercial and technical motives were decisive, ~~FRASSARD~~ contacted ~~KUEHLIN~~, the director of the Swiss dyestuffs factory Geigy, informed him "without using to direct language"

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on the fate of his country and the situation prevailing there" and said he would like in the near future to resume relations with the Swiss firm. KUEHLIN informed SCHNITZLER of this by letter and continued verbatim: "He (FRASSARD) then several times asked what was your general attitude and when I mentioned that you had expressed your intention to take up connections with him, he was obviously relieved."

cf. KUEHLIN Brief of 24 October 1940,
SCHNITZLER Exh. 219, Dec. 220, Vol. XIII, p. 10/11.

This letter shows that FRASSARD and SCHNITZLER almost simultaneously made efforts to come into contact with each other with the assistance of their mutual Swiss friend from the dyestuffs industry.

This letter at the same time explains the Prosecution Exh. 2144, NI-795,

Germ. Tr. p. 12984, Engl. Tr. p. 12703

submitted during the KUGLER cross-examination.

As early as 30 October 1940 envoy HEMMEN informed M. BOISANGER, head of the French delegation in Wiesbaden, that he considered the proper time had come for opening negotiations between the German and French dyestuffs industries

Exh. 1246, NI-6727, Vol. 57,
Germ. p. 90, Engl. p. 77.

The Prosecution believes that it can be inferred from the Exh. 2144 mentioned above and from a further Exh. 2142, letter from Herr von SCHNITZLER and Herr KUGLER to Dr. KRAEMER of 5 November 1940, that the I.G. Farben management especially welcomed the plan that the first conference was to take place in Wiesbaden in order thus to exercise a pressure on the French by collaborating with the government authorities.

In his statement

Germ. Tr. p. 13059, Engl. Tr. p. 12816/17

Dr. KUGLER declared that the struggle about competencies already brewing

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between Paris and Wiesbaden after 8 November 1940 became acute. The result of this struggle was that the government authorities in Wiesbaden as well as in Paris urged that the negotiations should be carried on in their place. As is seen from Exs. Exh. 1886, NI-14242, I.G. Farben was in this controversy the subject of official considerations. In view of the German economy's being under strict government control it was impossible to contradict the request of Envoy HEIMANN that the negotiations should take place in Wiesbaden. Since, as followed from the above statements, the French were the first to let their official French representatives in Wiesbaden participate in the negotiations with I.G. Farben and on the French side an official representative of the Vichy government - General BLANCHARD - was to take part, I.G. Farben, as a matter of course, was interested in having the principle of equality observed with regard to the participation of government offices.

SCHNITZLER Exh. 49, Doc. 45,
Vol. III, .2.
Exh. 1245, NI-6727, Vol. 57,
Germ. p. 91, Engl. p. 78.

III. The negotiations between I.G. Farben and the French dyestuffs factories.

1. The chemie conference of 21 November 1940 in Wiesbaden the German and French economy delegations with the crisis commission participating, and the conference between the representatives of the German and French dyestuffs industry in Wiesbaden of 22 November 1940.

The Trial Brief of the Prosecution asserts that the minutes submitted

Exh. 1246, NI-6727, Vol. 57,
Germ. p. 90, Engl. p. 77 and
Exh. 1247, NI-6838, Vol. 57
Germ. p. 106, Engl. p. 100

reveal an atmosphere of coercion and intimidation.

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Trial Brief Part II, sec. 29,
Germ. p. 41, Engl. p. 39

HEIMEN proceeded energetically with regard to the French, which was not denied by the defendants ter MEER, Dr. KUGLER and the witness Dr. KUEFFER. Nowhere does it, however, appear that I.G. Farben had requested or even only desired the atmosphere in which the negotiations were carried on or the attitude shown by HEIMEN. ter MEER justly points out that it was not known in what manner HEIMEN would proceed and that they were happy to be able to negotiate without a government representative the next day.

Testimony of the witness KUEFFER,
Germ. Tr. p. 6054, Engl. Tr. p. 5999.

Testimony of ter MEER,
Germ. Tr. p. 13 371/73, Engl. Tr. p. 13 043.

Testimony of the witness KUGLER,
Germ. Tr. p. 13 069, Engl. Tr. p. 12 816.

The Rebuttal Document, Exh. 2196, NI-15227, SCHNITZLER's letter to HEIMEN of 17 March 1941, is according to its subject purely a letter of apology, because HEIMEN obviously had criticized his not having been invited to the conference of 12 March 1941 whereas French government representatives had been present.

Germ. Tr. p. 13 458 and 13 555,
Engl. Tr. p. 13 164.

The minutes of 21 November 1940, Exh. 1246, clearly show that the French proposal to continue German-French cooperation after the collapse of France on the basis of the old cartel agreement was not acceptable to I.G. Farben. The reasons are shown in the opinion by the witness KUEFFER. The association of the French chemical industry, which corresponded to the economic group chemistry in Germany, in a circular letter to its members at the beginning of the year 1939 explicitly pointed out that the international agreements had become ineffective ("resilies") owing to the war and recommended filling the gap which thus had

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come about on the markets.

SCHNITZLER Exh. 6, Doc. 6,
Vol. III, p. 8 - 15.

Testimony of the witness Dr. RUEFFER,
Germ. Tr. p. 6072/73, Engl. Tr. p. 6017/18.

It was, therefore, illogical when the French wished to adhere to the cartel system as it had existed before the war without making any changes. Herr von SCHNITZLER could justly point out as well that the German-French cartel, for instance comprised the participation of the French in the German market and that this was absolutely impossible under the changed conditions. The astonishment on the part of the German partners at the attitude of the French who themselves had so intensely urged the initiation of negotiations and had expected to be rescued by the help of I.G. Farben, was therefore justified.

The German proposal is substantiated in detail by the documents submitted by the Prosecution,

Exh. 1245, 1246, 1247,
NI-15901, 6727, 6838,
Vol. 57, Germ. p. 45, 90 and 106,
Engl. p. 64, 72 and 77.

It was based on the claim of leadership which I.G. Farben asserted. The claim of leadership is motivated by the historical development and the fact that the German dyestuffs industry until the outbreak of war in 1939 supplied roughly 55 to 60 per cent of the world export. With the exception of the French factories St. DENIS and Ets. STEINER in Vernon, the French dyestuffs industry was based on the potential of the six German branch factories which I.G. Farben's predecessor firms owned in France before world war I 1914 - 1918. It was I.G. Farben's object to achieve a cooperation which would prevent a disruption of the European market and exclude inter-European competition; in addition, that no disruption of harm to the rehabilitation of the all European economy should develop and that

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competition with the overseas dyestuffs industry of the four continents outside of Europe, which in itself would be difficult in the future, should not be made still more difficult by the fact that the Europeans compete among themselves. Incidentally, the ideas of the German and French groups coincided in this respect even at the first conference in Wiesbaden. General BLANCHARD, as well, stressed the fact that as early as 1927 the necessity had arisen for the European dyestuffs industry to consolidate in order to counter American competition effectively.

Exh. 1245, NI-15901, Vol. 57,
Germ. p. 75, 76, Engl. p. 64, 65.
Exh. 1246, NI-6727, Vol. 57,
Germ. p. 91, Engl. p. 78.

It follows from

Exh. 1247, NI-6838, Vol. 57,
Germ. p. 109 ff, Engl. p. 104 ff.

in what manner I.G. Farben conceived the rationalization of its leadership claim which limits itself to dyestuffs, organic intermediates products and dye substitutes (Hilfsmittel) exclusively.

- a) through rationalization, to wit:
- b) consolidation of the French dyestuff factories into one uniform French dyestuffs company,
- c) restriction in principle of the French dyestuffs industry to supplying the French home market and the French colonies,
- d) export activity insofar as it meets the joint interests,
- e) financial interest of I.G. Farben in the French dyestuffs industry,

whereby the stock of the new corporation was to be divided as follows:

49 per cent French group and
51 per cent I.G. Farben.

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To begin with I.G. Farben had intended to participate with 50 per cent of the capital. The idea of demanding 51 per cent proceeded from the wish to build up the company on a parity basis. This was, however, not possible within the administration for legal reasons, at any rate not, if the president of the company was a Frenchman and this was demanded by the French group. For the position of the president was especially prominent on the basis of two new French laws. The first law is of 18 September 1940, whereas the second law was issued on 16 November 1940.

MAN Exh. 264, Doc. 650,
Vol. V, p. 99, b.

MAN Exh. 265, Doc. 651,
Vol. V, p. 100.

Fros. Exh. 1247, HI-6838,
Vol. 57, Germ. p. 114, Engl. p. 107.

It is natural that during the first conference controversial problems came up. "Any one having had experience with complicated agreements knows that such agreements do not come about over night", especially not if new conceptions are involved. "A common foundation must first be found. Neither did I.G. Farben have a clear conception. Many French demands were accepted.

Testimony of the witness ter MEER,
Germ. Tr. p. 13303, Engl. Tr. p. 13010.

The document on the Wiesbaden conference of 21 November 1940, submitted by the Prosecution, does not show the reasons why envoy HEIMLEN warned the French partners of the possible peace treaty between Germany and France. The question is absolutely open to discussion whether in view of the adoption of an increasingly rigorous political course by the National Socialist Government this warning was not absolutely justified, since nobody could know how the peace treaty would turn out to be. At any rate this veiled threat of envoy HEIMLEN does not incriminate I.G. Farben and its representatives in Wiesbaden.

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After the Wiesbaden conference at which the French reserved for themselves the right to discuss the problems with their firms and their government and to give a written reply, M. DUCHEMIN asked Major Dr. KOLB, head of the Referat chemistry with the German military government, in a letter of 10 December 1940, not to continue the Wiesbaden conference in Paris until the time between 15 and 20 January, since M. FROSSARD had fallen ill. In this letter he attaches importance to the continuance of the negotiations.

SCHNITZLER Exh. 50, Doc. 46,
Vol. III, p. 5 - 7.
Exh. 1248, NI-3707, Vol. 57,
Germ. p. 117, Engl. p. 110.

It is true, DUCHEMIN protested and according to the Prosecution Exhibit 2194, NI-15240, submitted during the cross-examination of the witness ter MEER on 3 May, 1948 - he spoke of a letter written on 21 November 1940, (cf. Exh. 1248) which contains the sentence, so strongly emphasized by the Prosecution, stating that he would rather have his hand cut off before signing such an agreement. In this connection it must be taken into consideration that not an Anglo-Saxon but a temperamental Latin is involved, and that in France such phrases are quite common and, therefore, need not be taken so seriously. That DUCHEMIN himself did not really mean what he said is proved by the fact that he at the same time declared "the French group was convinced that by proper negotiations a "terroin d'entente" would be found" and that in the course of the same discussion when learning of the possibility of an exchange of stock for other stock he declared that this would make the transaction more acceptable for the French.

Exh. 1248, NI-3707, Vol. 57,
Germ. p. 118, Engl. p. 111.

On 16 January, 1941 FROSSARD called on Herr KUMER, the I.G. Farben representative in Paris, and again showed his interest in the continuance of the negotiations in Paris. He

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described the internal resistance existing in their own ranks, but he also pointed out that DUCHEMIN as well had become irresolute and that the standpoint of the French which he himself designated as radical had to be revised. He informed Herr KRAMER that DUCHEMIN already had reproached himself bitterly for having used the expression he would rather have his hand cut off than sign such an agreement. The French were beginning to examine the idea of a joint production company more and as early as 16 January FROSSARD proposed a participation on the basis of 50:50.

2. The German-French conferences in Paris on 20 and 21 January 1941

The negotiations between I.G. Farben and the French group were continued in Paris on 21 January 1941 - thus exactly on the date which DUCHEMIN proposed in his letter to KOLB of 10 December 1940.

SCHNITZLER Exh. 50, Doc. 46,
Vol. III, p. 5.

This document refutes the charge of the Prosecution alleging that I.G. Farben intentionally had delayed the negotiations; since the actual short delay was due to FROSSARD's having fallen ill.

During this meeting DUCHEMIN declared that the French group in principle acknowledges the German leadership claim", however it recommended the establishment of a sales company with a 25 per cent participation.

Exh. 1250, II-6949, Vol. 58,
Germ. p. 2/3, Engl. p. 1/2.

I.G. Farben did not consider this acceptable, because this did not contain any guaranty for a permanent German-French cooperation in the field of dyestuffs". In I.G. Farben's opinion this could only be achieved through a joint production company. (cf. Exh. 1250, Germ. p. 3, Engl. p. 2, quoted above.)

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Simultaneously I.G. Farben submitted a proposal which was very favorable and important to the French; I.G. Farben intended to apply to its government offices for the permission to transfer to the French the equivalent of its participation in the joint French company not in cash but in I.G. Farben stock.

In addition, I.G. Farben offered the French full participation in the technical and commercial know-how of I.G. Farben and in the development of the entire chemical industry in Germany, (cf. Exh. 1250, G. p. 4, E. p. 3 quoted above). At the same time it accommodated the French in one more point; on its own initiative it suggested that the president of the company should be a Frenchman acceptable to both groups and recommended FROSSARD.

It added in its suggestion verbatim:

"In view of the leading position the president of the Conseil d'Administration holds according to stock laws, a 51 per cent participation must incidentally be regarded as a necessary counter-balance."

The customary rules were thus set aside which provided that in the case of a foreign stock majority the business management was to be foreign as well or was to be at least appointed by the foreign partner on the basis of his majority. In the minutes on this session the German Solvay plant, the firm Opel, Unilever-Konzern, International Company are mentioned as examples,

cf. Exh. 1250 Gern. p. 5, Encl. p. 4, quoted above, in addition, ter MEER statement, Gern. Tr. p. 13387/88, Encl. Tr. p. 13060.

The conference of 20 January ended with the declaration made by the French group that they would on the same day discuss I.G. Farben's detailed statements with their companies and with the French government offices. On the next day, on 21 January, the conference was continued and DUCHENIN announced the result of the discussions held

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by the French in the meantime:

"The Executive Boards of the companies involved agree in principle to the formation of a uniform production company for dyestuffs, their intermediate products and their auxiliary products. In particular, the firm St. Denis was willing to let its plants for the corresponding products become merged in the production company."

Exh. 1250; NI-6949, Vol. 58,
Germ. P. 5, Engl. P. 5.

DUCHEMIN added that the French group up to then had only been able to confer with the Production and Labor Ministry, not, however, with the Finance Ministry.

"The Production and Labor Ministry regards the proposal of I.G. Farben to pay the equivalent of its participation in I.G. Farben stock as a favorable solution which would facilitate the entire arrangement."

The Ministry, however, wanted to grant I.G. Farben only a 25 per cent participation.

Exh. 1250 (see above)
Germ. P. 6, Engl. P. 5 and 6.

Thereupon I.G. Farben had an internal conference and then declared with regard to the 51 per cent participation:

"Only in case of a participation amounting to 51 per cent are the technical and commercial cooperation, on the one hand, and the cession of I.G. Farben stock by way of capital mergers on the other hand, justified. A minority participation represents a purely financial transaction for which a cession of stock and a cooperation as suggested above are out of the question".

This question could not be agreed upon during this session since DUCHEMIN declared "the decision about the percentage must be left to the government offices."

Exh. 1250 (see quotation above)
Germ. P. 7, Engl. P. 6.

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FROSSARD declared on 31 January 1941 that at the discussions in Vichy he would advocate the standpoint that the 51 % be accepted. In this conversation with Dr. KRIEGER FROSSARD describes the 51 % solution "as a very generous gesture of the I.G. Farben".

Exh. 1251, NI-3708, Volume 58,
Germ. p. 12, English p. 7.

On 28 February 1941, Mr. FROSSARD informed Herr KRIEGER that a conference had taken place on 27 February between DUCHESNEAU and BERNARD, the newly-appointed delegate for a Franco-German economic understanding, further with Under State Secretary FUCHS and General BLANCHARD. FROSSARD was convinced that the Government would approve the establishment of the Franco-German and that thereupon the possibility of "sending dye stuffs to the unoccupied territory" would be again effective immediately afterwards.

SCHNITZLER Exhibit 52, Doc. 48,
Volume III, p. 19-22, (Prosecution Exh. 2145).

After the French group had conducted the discussions necessary for its decision with the French Government agencies, further negotiations with the I.G. Farben were scheduled for the middle of March. Thus Dr. KUGLER writes Dr. KRIEGER under the date of 18 February: "We then hope... that the Paris trip can take place at the beginning of March."

Exhibit 2147, NI-15 238, introduced in the cross-examination of the defendant KUGLER,
German transcript p. 13031, English p. 12779.

The Prosecution believes that the I.G. Farben here again tried to exert a pressure through retardatory tactics and introduced Exhibit 2148, NI-15222, according to which Dr. KRIEGER telephoned to state that he did not consider it expedient "to conduct the contemplated negotiations", believing on his part that it was required "first to put pressure on the French authorities before entering upon further discussions."

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The Prosecution is always extremely proud if it finds a document in which the word "pressure" occurs, and believes to be able to use this to sustain its thesis. It is often difficult after a lapse of 7 or 8 years, without being in possession of all pertinent documents, to reconstruct the train of thought of each separate document and to explain each separate document. But, in the case of this document it can be done exhaustively, and it can therefore be taken as a typical instance among many others. Even the letter from Dr. KUGLER dated 18 February, Exhibit 2147, quoted above, shows that the I.G. Farben would not delay, but wanted to continue the negotiations, in other words would not exert any pressure in the form of a tactical delaying. Now on 6 March Dr. KRAMER proposed using the delaying tactics for the benefit of their commercial interests. If now the I.G. Farben at any time had resolved to exert pressure, this would have been the proper time to postpone the negotiations because the I.G. Farben knew that for economic reasons it was important to FROESCHKE to start with the work and the setting up of the company as soon as possible. But this was the very thing the I.G. Farben did not do; on the contrary it rejected KRAMER's proposal, and the next important negotiation took place a few days later, on 12 March 1941, as scheduled. It can hardly be made more obvious that the I.G. Farben did not want to exert any pressure. Applying this example I can also further demonstrate what is typical for the tendentious method of the Prosecution, that it establishes a connection between documents that are chronologically widely separated, and further accentuates the purport of these documents through introducing excerpts only. In this case it introduced Exhibit 2147 just mentioned in the cross-examination of Dr. KUGLER and established a connection between this document and a note by KRAMER, Exhibit 2146, in which KRAMER speaks of a negative decision of the competent offices for export and about export of dye-stuffs to the unoccupied territory being not permitted. To this the Prosecution refers to Exhibit 2147 in which KRAMER's attitude has been approved. This combination is a complete distortion.

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KRAMER's note dates back to 13 December 1940, whereas KUGLER's letter was written on 18 February 1941. This letter (2147) does not with one word mention the note of 13 December or even a non-permitted export to the unoccupied territory; on the contrary, in the beginning of the letter KUGLER refers to a report made by KRAMER and dated 14 February, which report, however, was not introduced by the Prosecution. The entire combination of the Prosecution, through which it tried to prove Frankfurt's approval of KRAMER's behavior in Paris is therefore untenable. But in this trial it is not decisive what was done once by KRAMER in Paris in an individual case, but only what the I.G. Farben management did from Frankfurt, and by the example quoted in the foregoing I have demonstrated that these two things were by no means always identical and simply for this reason that the management of the I.G. Farben always kept the main idea in view, the plan of establishing a joint firm together with the French group as soon as possible.

In this connection I shall also mention that the notes made by the Paris representative KRAMER must not be overestimated. They represent nothing but a momentary impression or a momentary intention based on a more narrow field of vision. It would be just as possible to compile excerpts to prove that even KRAMER tried to settle the matter on an economic basis and to avoid all delay. It will be sufficient to quote one example: In the memorandum on the discussion in Paris from 28 - 30 November 1940, Exhibit 1886, NI-14224, introduced in the cross-examination of ter MEER on 17 February 1948

German transcript P.7290, English transcript P. 7231,

a discussion between KRAMER and THESSLER is mentioned under Figure 3, in which THESSLER says that the French group hopes to have completed their considerations as to their attitude in two weeks, but that in his opinion it would be advisable not to convene for further negotiations until January 1941. Concerning this question Dr. KRAMER gives the I.G. Farben personally the advice under no circumstances to handle the matter in a dilatory way.

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The short excerpt of Exhibit 2146 submitted by the Prosecution is supposed to prove that KRAMER as Paris representative was active in bringing about refusals of applications for exports to the unoccupied territory. The Prosecution did not submit the full text of the document, the excerpt distorts the impression.

From the full text it appears that the negotiations on the abolition of the demarcation line had failed on 13 December, and that the situation now involved far more difficulties. It was not proved whether at that time exports altogether and then which exports had been permitted by the military commander into the unoccupied territory. From the point of view of the German military authorities in France the unoccupied territory must be considered foreign territory. The question has been left open which dye-stuffs and chemical products were destined for the subsequent Francolor plant St. Clair du Rhone, and whether considering the insignificance of the St. Clair plant the dropping of this export was of so much weight. It has not been stated in details whether the applications mentioned by KRAMER were exclusively applications of the KUEHLHANS Concern.

The Francolor plants at the conclusion of the Francolor agreement possessed rather considerable supplies. In the event that an agreement was reached with the French dye-stuff industry the I.G. Farben had a justified commercial interest in seeing that supplies ~~was~~ were available for the Francolor plants. They were under no obligation to contribute to a diversion of supplies and raw materials into the unoccupied territory which meant into foreign territory.

to this: of testimony KUGLER, Germ. transcr. p. 13179/80,
English transcript p. 12834/35.

It must be taken into consideration that a new company had been planned. But to this it was an indispensable condition that when the establishment had finally taken place sufficient supplies were on hand, in particular since the I.G. Farben would have been forced to compensate for a possible shortage of supplies which might arise in consequence of too large exports that might take place in the meantime.

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Therefore from an economic point of view it was perfectly understandable if the Paris representative was interested in ensuring that the supplies required for the new establishment remained intact.

Mr. FROSSARD in his concern about the employment of St. Clair du Rhone was also influenced by the fact that he, as evidenced by

Prosecution Exhibit 1886, NI-14224, p.6, introduced in the cross examination of the defendant ter MEER on 17 February 1948, Germ.trans.p.7290, Engl.trans. p.7231, had become president of St. Clair. Even he considered the commercial interest the most important thing. He feared the competition of the Swiss plant in St.Fons, the "Ciba".

Exhibit 2151; NI-3708, Vol. 58
G. text p.12, Encl.p.7,
SCHNITZLER Exhibit 52, Doc.48, Vol.III,
Germ.text p.21, Engl.p.21.

Therefore, it was absolutely in his own interest make the new company a going concern as soon as possible. It is worth noticing that the French Government, as it appears from Exhibit 1251, would not admit any finished dye-products into the unoccupied territory, but apparently had to permit intermediate products for the Swiss plant. Following the establishment of the company Mr. FROSSARD was to try energetically to bring about a strangling of the Swiss dye-stuff imports by the French Government. From this it appears that the most varying economic and commercial considerations influenced the situation at that time in the unoccupied territory.

Exh.1249, NI-6947, Vol.57, Germ.text p.120 ff.,
Engl.text p.112 ff, also cited by the Prosecution,
must be evaluated to the same effect.

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3. Accord Reached on the Basic Conditions of the Franco-German Agreement on 12 March 1941 in the Presence of the French and German Government Representatives.

After the French group had discussed all questions with its Government the final fundamental meeting "concerning the founding of a Franco-German dye-stuff company" took place on 12 March 1941 in the Majestic Hotel in Paris.

Exhibit 1253, NI-6950, Vol. 58,
German text p. 17 ff., English text p. 11.

From the lists of attendants it appears that besides the I.G. Farben and the French dye industry the German military commander in France was represented by Dr. MICHEL and three other gentlemen, further the French Government by its above-mentioned members BARNAT, State Secretary FUCHEUX, and General Secretary NICHELOMME, and General BLANCHARD. At this meeting the basic accord was reached. The representatives of the two governments were present because DUCHEMIN had declared that the final decision lay with the French Government. BARNAT declared that the Government upon thorough examination of the project would agree to a 51 % participation of the I.G. Farben, and that he realized that it was here "not a question of a unilateral control by the I.G. Farben as an expression of political power", in which connection he pointed out that agreement had been reached on three points:

- a) The president of the new company must always be a Frenchman and can be appointed by the two groups jointly only;
- b) each group will be represented by an equal number of members of the Executive Board;
- c) the agreement constitutes no precedent applicable to the rest of the French industry.

Besides, the I.G. Farben by a declaration of Dr. von SCHMITZLER at the request of the French group and State Secretary FUCHEUX renounced a "monopole de droit" which made BARNAT remark that in view of this renouncement

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"the question whether the German participation should be 51% or 50% has become less important."

The transcript, Exhibit 1253, was expressly approved by the French Government authorities.

SCHNITZLER Exhibits 53 and 54, Doc. 49 and 50, Vol. III, p. 23 - 28.

If one examines this transcript and the preceding discussions with the members of the French Government it is hard to understand, how the Prosecution can view such economic negotiations under the aspect of spoliation or application of a punishable pressure, in particular if it is further considered that the Government authorities especially for months again and again and with minute attention devoted themselves to all details of the contractual arrangements. Numerous conditions were set forth and various declarations were demanded from the I.G. Farben and from the French group, before the Government at last gave its final approval.

SCHNITZLER Exhibits 68-70, Doc. 64-66, Vol. III, p. 80-92.

SCHNITZLER Exhibits 71-75, Doc. 67-72, Vol. IV, p. 1-37.

Quite in particular I should like to stress that Exhibit 71, a letter from the French Minister of Finance Bouthillier to the French dye plants dated 30 October 1941, was drawn up with great accuracy on the part of the Government after a close scrutiny of the by-laws, in the form of a 20-page letter.

The Prosecution, being apparently itself under the impression that it is beyond the point to speak of pressure or of spoliation in view of this factual situation, has in this trial as well as in the other Nuerenberg trials argued that the Vichy Government was a puppet government and its approval therefore without significance.

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With reference to this point I have submitted some documents from which it appears that the Vichy Government was a lawful government formed on a constitutional basis.

SCHNITZLER Exhibits 96-99, Doc. 93-96,
Vol. V, p. 51-103.

SCHNITZLER Exhibit 211, Doc. 186,
Vol. X, p. 81-83.

SCHNITZLER Exhibit 220, Doc. 224,
Vol. XIII, p. 12 - 14.

The government was constituted in pursuance of the resolution of an absolute majority of the French National Assembly on 10 July 1940, I refer in particular to the opinion of Herr von BOSE, member of the present ministry of justice of Wuerttemberg,

SCHNITZLER Exh. 98, Doc. 95,
Vol. V, p. 73-83.

and to the excerpt of the book by Thomas A. BAILEY, Stanford University, "A Diplomatic History", in which it reads verbatim:

.....

"Vichy was the only legal government of France, and as such the State Department continued official diplomatic relations with it....."

From the affidavit of Dr. Hans KUNTZE, Exhibit 211, it appears quite clearly that BERNARD was no Quisling nor a collaborationist, but an independent person even in his outer appearance, from whom blind obedience or unqualified compliance with German wishes could never be expected. Further it appears that FUCHEUX adopted an attitude of rather sharp opposition to German authorities but had accepted the office of minister of production because he believed himself able to bring about a reasonable development with respect to production control. DICHELONNE, an expert of particularly high standing, considered it to be his task to complete the establishment of an organized system, by means of which

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the production and the distribution of all industrial products could be secured even through a period of short supplies. All the aforesaid Frenchmen under a continual exchange of opinions contributed to bring about the agreement between the German and the French partners at the negotiations.

Concerning the approval of the German Government authorities reference is made to the affidavit of Dr. MICHEL

SCHNITZLER Exhibit 209, Doc. 184,
Vol. X, p. 64, ff.,

from which it appears that the German Government authorities were directed exclusively by economic points of view.

The acquisition of capital interests in the French industry was in the opinion of the Reich Ministry of Economy and the economic department of the military commander an important subject from the German point of view, but it was something that should be reached only on the basis of voluntary commercial negotiations and agreements.

4. Negotiations concerning contractual details between the I.G. Farben, the French group, the French and German Government authorities, following the fundamental accord reached on 12 March up to the conclusion of the agreement on 18 November 1941.

The I.G. Farben already at the end of June 1941 placed a first order with the three French dye plants amounting to RM. 2,652,840. This shows the interest of the I.G. Farben and its efforts to support the French dye plants already prior to the conclusion of the agreement.

SCHNITZLER Exhibit 55, Doc. 51,
Vol. III, p. 29-38.

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On 9 July 1941, the Reich Office for Chemical Products approved orders to the French dyestuff industry covering an annual delivery of 3000 tons, and at the same time it permitted the I.G. Farben to allocate preliminary products, raw and auxiliary materials to the French dye-stuff industry and to subsidize the repair of the plants.

SCHNITZLER Exhibit 56, Doc. 52,
Vol. III, p. 39-41.

Through discussions taking place in Paris on 16 - 19 June 1941 under the chairmanship of Herr von SCHNITZLER a basis was found for the computation of the stock capital of the new company and for the fixing of the effective price of the stocks which the I.G. Farben was willing to offer the French partners as compensation for their participation in the new enterprise, and finally for the appraisal of the supplies on hand.

cf. SCHNITZLER Exhibit 58, Doc. 54,
Vol. III, p. 44 - 51.

As basis for the evaluation of the assets of the Franco-German I.G. Farben used the statistic material and specified calculations as they were supplied by the French partners.

At the request of the French partners the I.G. Farben declared its assent to the arrangement that the stocks were to be paid with 160 % only, although they at that time in quotations at the exchange reached a price of almost 200 %.

The I.G. Farben did whatever it could to speed up the whole affair.

Immediately following the Paris negotiations from 16 - 19 June 1941 the I.G. Farben tried to secure the official permissions required to implement the Paris resolutions. It is important that in its applications the I.G. Farben in particular stressed the reversion to normal pre-war conditions. Letter from the I.G. Farben to the Reich Ministry of Economy dated 26 June 1941,

SCHNITZLER Exhibit 65, Doc. 61,
Vol. III, p. 67 - 74.

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The applications of the I.G.Farben were granted through a letter from the Reich Ministry for the Economy dated 29 July 1941 "in the interest of the co-operation with the French dye-stuff industry".

Schnitzler Exh. 66, Doc. 62?Vol.III,
P. 75-76.

Also the Foreign Exchange Control Office gave its approval of acquisition of I.G.Farben stocks amounting to RM 12.750.000 and at the same ^{time} /granted the application of the I.G.Farben for providing the Francolor with a credit not to exceed 10 million Reichsmark.

Letter dated 26 August 1941, Schnitzler Exh. 67, Doc. 63,
Vol. III, p.77-79 .

During the negotiations in Paris on 21-24 July 1941, which took place under the chairmanship of the defendant ter Meer as deputy of Dr. von Schnitzler who was sick, Minister Bichelonne asked ter Meer for an interview. The minister informed ter Meer that the French chemical industry had protested against the Francolor agreement because it was feared that as a result of the collaboration of the Francolor and the French mother firms with the I.G. Farben all inventions would now be reserved for this one group. This the French industry could and would not permit. Ter Meer reassured Bichelonne and gave the minister a statement issued jointly by the I.G.Farben and the three French mother firms. In this statement it was declared that it was not the intention of the I.G.Farben to oust other French enterprises in the chemical industry.- whether small or big- from their position in the domestic or foreign market. The protest disclosed by Bichelonne aroused apparent consternation with the French partners since they had to anticipate that at the last minute the agreement could still be wrecked. As ter Meer had promised Minister Bichelonne that he would immediately start negotiations with other French firms concerning delivery of the Buna process and also would further continue the pre-war co-operation with the big firm St. Gobain, it was thus possible to steer clear of the reef.

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Testimony of the witness ter Meer, Germ.Trans.P. 13305, Eng.Trans.P.13011/12 Exh. ter Meer 248, Doc. 73, Vol. III, p.67, (Schnitzler Doc. 64, Exh. 68, Vol. III, P.80).

No evidence can be imagined proving more conclusively that the French group concluded the agreement voluntarily and that they found it involved the greatest advantages.

On 30 October 1941 the French minister of finance Bouthillier wrote to the three French dye plants and proposed a number of conditions to the I.G. Farben and the French group. The French groups answered immediately on 31 October through Duchemin, Thesmar, and Frossard, and the I.G. Farben likewise declared already on 3 November 1941 that in the essential things it accepted the conditions made by the French minister. On 6 November the French group declared its final approval of the minister's conditions.

Schnitzler Exh. 71-74, Doc.67-70, Vol. P.1, ff.

These dates are evidence of the great speed and the great interest with which the French and the I.G. Farben wanted to secure the agreement. The person of Minister Bouthillier was in every respect a guarantee that the French general and specific economic interests were duly considered in negotiating the Francolor agreement. Bouthillier represented from the beginning the sharpest opposition to the occupation power.

To this cf. Affid. of Dr. Hans Kuntze, Schnitzler Exh. 211, Doc. 186, Vol. X, P. 9

With the shortest possible delay the final agreement signed on 18 November 1941 in Paris.

cf. Exh. 1255, NI-6845, Vol. 58, Ger. Text, Eng. text, p. 35, ff. and German Text, p. Eng. text P. 55.

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5. Summarizing judgment of the Francolor agreement and of the by-laws.

In the first place, as to the form, the "convention" was drawn up in collaboration between the French group and the experts of the I.G. Farben. The by-laws in their essential parts were drafted and prepared by French jurists, with the assistance of a professor of law of the Paris University.

Testimony of the witness Kuepper, Trans. Germ. P. 6070, Eng. Trans. P. 6016.

Concerning the 51% participation, see pp. 52-58.

For the judgment of this question it is authoritative what was laid down in the agreement. (Article II of the Convention).

To this the following supplementary remarks are added:

The claim to leadership was clearly circumscribed and was made with reference to the fact that the leading position of the I.G. Farben in collaboration with the French dye-stuff industry covered only dye-stuffs, organic intermediate product and dye auxiliary agents.

Exh. 1247, NI-6838, Vol. 57, Germ. Text P. 110, Engl. Text P. 104.

The prosecution has tried to refute this and simply speaks of a holding majority within the French chemical industry, in which connection it believes to be able to describe the firms participating in the Francolor as the "essential" chemical firms.

Indictment, Figures 103 and 106.

The policy of limiting the claim to leadership of the I.G. Farben as stated above was never abandoned by the I.G. Farben.

Exh. 1855, NI-5810, Vol. 57, Germ. Text P. 68.
Eng. text. P. 60, Article 18 of the Convention,
Exhibit 1255, NI-6845, Vol. 58, German text P. 54
Engl. text, P. 46.

Testimony of the witness Kugler, German Trans. P. 13173/74, Eng. trans. P. 12828/29.

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The Prosecution is trying in vain to confuse the clear facts of this evidence which have found their expression in Article 18 of the Convention, through various documents Exhibit 328, NI-807, Vol. 58, Germ. text P. 29, Engl. P. 22. Exhibit 2143, NI-15224, Exh-2153, NI-15220, introduced in the cross examination of the witness Kugler on 29 April 1948,

Germ. transcript P. 13172 and 13185,
Engl. transcript P. 12828 and 12840/4a.

From Exhibit 328 it appears quite clearly that it was subordinate field of the Francolor which for special reasons was subject to special rules included in the agreement.

The testimony of the witness ter Meer
Germ. trans. P. 13294, Engl. Trans. P. 12999,
refutes the Prosecution's allegation under Figure 103 of the Indictment that the I.G. Farben wanted to acquire a holding majority in the French chemical industry. As was well known, the firms Kuhlmann, St. Denis, and St. Clair participated in the foundation of the Francolor. It is true that Kuhlmann is one of the largest chemical concerns of France. But, in the production of the Kuhlmann concern the production of acids, heavy chemicals, and nitrogens was predominating from the point of view of quantity. The chemical industry in particular was not at all affected by the Francolor transaction. These spheres of production remained the independent possession of the firm Kuhlmann. Besides there is a large number of large-scale chemical plants in France, such as St. Gobain, Pechiney, the Electro-Chemie, Rhone Poulenc, Air Liquide, and the rayon fi Gilet. St. Denis and St. Clair du Rhone are plants of medium proportions. The peace-time sales of Francolor products amounted to approximately 3% of the sales of the entire chemical industry in France.

The testimony of ter Meer is confirmed by Kugler

Germ. trans. P. 12977/78, Eng. Trans. P. 12695/96.

It is altogether impossible to speak of a majority participation of the I.G. Farbenindustrie in the French chemical industry.

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The agreement does not make it possible to use the power derived from the majority to suppress the French group within the Francolor.

In Article 20 of the by-laws,
Exh. 1256, NI 6886, Vol. 58, Germ. Text. P. 83, Eng.
Text P. 73,

it was decided that the president of the company must always be a Frenchman. The president was to be appointed by mutual agreement of both groups.

According to Article 20, Section 3, the president can be deposed only by resolution to this effect by two stockholders' meetings. If he is deposed the new president can be appointed only by means of an agreement between the two groups.

The members of the Executive Board, Article 16, Sect. 1. (Vol. 58, Germ. Text. P. 81, Eng. text P. 72), are to be appointed not by the stockholders' meeting but one half by the German and one half by the French group. Thus the French partners were here expressly given parity in spite of the 51%; the same was the case in the Commercial and Technical Committees.

Article 8 of the Convention (Vol. 58, Germ. text, P. 46/47, Eng. text P. 40). According to Article 23 of the Convention (Vol. 58, Germ. text P. 60, Eng. text P. 52), only French personnel was to be employed by the Francolor as long as the company was in existence. Only the French president could authorize exceptions, in other words not the stockholders' meeting. From what has been stated above it appears that in the drawing up of the Convention and the by-laws, the French party was absolutely predominant.

Testimony of the witness Kuepper, Germ. trans. B.
6062, Eng. Transc. P. 6007 .

The I.G. Farben, by claiming a 51% capital participation, as is generally customary, did not want to secure the appointment or control of the business management. It wanted for legal reasons only to achieve a certain even balance.

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The 51% had no effects whatsoever with respect to the board directing the business management. The I.G.Farben could enforce the 51% interest only at the stockholders' meeting and depose the president. This form was at that time chosen the suggestion of the French jurists that were closely associated with the I.G.Farben, in order to create a counter-balance to the predominant position of the president assigned to him within the business management. According to French law it was not possible to appoint a second managing vice-president in the business management. The I.G.Farben therefore had to have a means to resort to in order to be able to take action if the president violated existing agreements. Therefore the I.G.Farben insisted upon the 51%. The 51% was supposed to establish a balance and constituted only a safe valve. Testimony of the witness ter Meer, Germ.trans.P.1339 Eng.Trans. P. 13062.

Thus, it was not a question of imposing a majority either on the French chemical industry or on the Francolor. The Prosecution has completely misinterpreted the agreement concerning the 51% participation.

Another reason for the demand for a 51% participation was the extensive technical assistance, which the I.G.Farben granted in Article 16 and 17 of the Convention (Exhibit 1255, Vol. 58, GermText P.52, Eng.text P.45). The technical assistance was granted in accordance with the rules of the model agreement which the I.G.Farben had concluded in 1938 with the IC (Imperial Chemical Industry). Testimony of the witness ter Meer, Germ.Trans. P. 13371, Eng.Trans.P.13043, Exh.ter Meer.27 Doc. 96, supplementary volume to Book ter Meer XIV, Affid. Dr. Loehr, P.12-20.

As already stated in the foregoing the I.G.Farben made effort to ascertain the basis of appraisal for the calculation of the stock capital within the shortest possible time.

cf. Schnitzler Exh. 58, Doc.54, Vol.III, P.44
Memo Dr. v.Schnitzler on th. Franco-German
discussion on 16-19 June 1941.

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The French submitted sales figures showing for 1938 an amount of 701 million and for 1939 774 million Fres., allowing for the revaluation of the Franc.

By using these figures as a basis (see P.46 of the document quoted above) the value of land, buildings, installations, and other items contributed by the French group for the Francolor was fixed at an amount of 800 million Fres. Of these 800 million Fres. of Francolor stock the mother firms surrendered 51% i.e. 408 million Fres. to the I.G.Farben. The I.G.Farben paid for this book of shares with I.G.Farben stock of its own possession the three mother firms of the Francolor received a total of RM 12,750.000 nominal shares of I.G.stock. The price of the I.G. Farben share was fixed at 160%. This fixing of the price was an act of obliging generosity towards the French group, since the stock exchange quotation at that time reached almost 200%. The witness Kuepper has testified that the question of evaluation of the plants and equipment supplied for the Francolor did not become the subject of any discussion, but the figures furnished by the French partners were made the basis of the evaluation.

The true (intrinsic) value of the I.G. Farben share at the time of the foundation was essentially higher. According to the tax return accounts the value was more than 300%, and then the dormant reserves were not yet considered.

In defiance of these facts the prosecution has tried to represent the agreement as disadvantageous to the French partners, again in a tendentious way stressing that the French group received only 1% I.G.Farben stocks in return for 51 Francolor shares. But here the prosecution failed to state the proportional value of the two amounts. It is possible to get comparable figures only when comparing the assets supplied for the Francolor with the aggregate assets of the I.G.Farben. But then a proportion of 1% to 51% is absolutely correct; and in addition it must be considered that a mistake has slipped in the calculation of the Prosecution; for actually the French group received not 1% of the I.G.Farbenstock capital but 1.4%, which naturally because of the high capital

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stock of the I.G.Farben makes a considerable difference. I have demonstrated the exact calculation through an affidavit of Hans Muench, from which it clearly appears that the Francolor received approximately 30% more than its due share if the calculation is based on the sales figures of the Francolor on one hand and of the I.G.Farben on the other. And then the advantage that it received the shares at a cheaper price, and as much as approximately 20% cheaper, has not yet been considered. Affid. Hans Muench, Schnitzler Exh. 85, Doc. 81, Vol. V, P.8-11. Schnitzler Exh. 64, Doc. 60, Vol. III, P.61-66.

References further made to Schnitzler Exh. 79, Doc. 75,
" " 80, " 76,
" " 81, " 77,

Vol. IV P. 71 -83,

where e.g. the Swiss press emphasizes the favorable computation of the prices and the fact that the I.G.Farben through this agreement reverts to pre-war agreements (cartel agreements).

The prosecution's trial brief, Part II, under Figure 30, German text P.43, Eng. text P.41, in an incomprehensible way speaks of unrealizable capital which the French firms had received from the I.G.Farben as "compensation", quoting here the agreement, Article 3, Exh. 1255, NI-6845, Vol. 58, Germ. text P.45, Eng. text P.39.

This article provides that the stock cannot be sold or pledged, that only transfers within the French group will be permitted. This provision is not unfair but economically justified. The purpose of the transaction was to establish a reciprocal merger. When two firms are merged it is a practice that each partner ties up the stocks of the other partner in his possession. The I.G.Farben was likewise pledged not to sell its Francolor shares. The merging of capital was effected on an independent basis without being affected by the fluctuations of the Franco-German balance of payments so that it was bound to function in any case.

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The Prosecution reproachfully pointed out that the I.G. Farben did not admit any representative of the French group to the Aufsichtsrat. On 20 January Duchemin had suggested this, Exh. 1250, NI-6949, Vol. 58, G.P.6/7 E.P.6, the answer of the I.G. Farben read:

"Concerning the request for a seat in the Aufsichtsrat the German group cannot specify any attitude towards this question. But it invites the attention to the fact that their group does not on their part claim a seat in the French mother companies."

This answer was based on the fact that the admission of foreigners as members of the Aufsichtsrat of a German joint-stock company was prohibited by official order, see Affid. Dr. Berndt, Schnitzler Exh. 212, Doc. 187, Vol. X, P.85. Article 5 of the Convention, German text P.46, Eng. text P.39, provides that the Francolor and the I.G. Farben dividends must be cleared against each other.

Article 15 envisages an organization of French exports along new lines. The export activity of the Francolor was to be limited to Belgium, Spain and Portugal, deliveries to the French colonies and protectorates being excepted. However, this provision did not involve that the aggregate volume of business of the Francolor should be reduced compared with pre-war times. The Francolor was given a production guarantee which was the equivalent of the pre-war production of 7,000 tons as defined by the Franco-German cartel.

Article 15 expressly provides that the I.G. Farben is to guarantee Francolor compensation if it was impossible for it to sell the aggregate quantity of 7,000 tons of dye-stuffs, as for seen. This represents the continuation of the old cartel idea.

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Besides it appears clearly from this arrangement that the Farben was not guided by the desire "to squeeze out reparat. but reverted to the position of the year 1927.

Schnitzler Exh. 205, Doc. 180, Vol. X, P.11-37.
Testimony of the witness Kuepper, Germ.P.6076, Eng. 6020/21. Testimony ter Meer, Germ.trans.P. 13300. Eng.Trans.P. 13006.

The by-laws of the company were put on a legal foundation on 10 December 1941 through a French law, in compliance with the conditions made by the French Government.

Schnitzler Exh. 76, Doc. 72, Vol. IV. P.38-62.

On 11 December 1941, Bouthillier, minister and state secretary for the National Economy and Finance gave the three French dye plants the final approval of the Convention on the condition that the agreement be ratified through a law.

Schnitzler Exh. 75, Doc. 71, Vol. IV. p.35-37.

On 12 December 1941 the stockholders' meeting of the Kuhlmann Firm took place in Paris, at which the Francolor transaction, suggested and now personally advocated by the well-known Duchemin, was accepted by the stockholders' almost unanimously. Schnitzler Exh. 77, Doc.73, Vol.IV-P.665.

The Convention was subsequently sanctioned by a law of the French State of 2 June 1942,

Schnitzler Exh. 83, Doc. 79, Vol.V, P.1-15 .

That the French partners displayed extreme gratification at the founding of the Francolor company is evidenced irrefutably by testimonies of witnesses, e.g.

a) Kuepper:

IV. The Effect of the Francolor-Agreement

I. Benefit derived from the agreement by the French partners.

Even before the agreement had been signed the French dyeworks had already received a sub-contracting order for a quantity of 1012 tons of dyestuffs in the value of 2,652,840 RM.

Schnitzler Exh. 87, Doc. 83, vol. V, page 13-14

Schnitzler Exh. 55, Doc. 51, vol. III, p.29-38.

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With the intention of rationalizing the 4 French plants of the Francolor and of developing them by elaborating and stating the manufacturing of further goods, a considerable number of manufacturing processes was handed over to the Francolor, especially manufacturing processes and technical blueprints with all details and apparatus. French chemical engineers were advised in the I. G. Farben plants in Germany; German chemical engineers and technicians of the I. G. Farben

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were sent to Francolor there to set up and start manufacturing plants. The French technicians were instructed in various techniques concerning dye-stuffs. The I. G. Farben had helped the Francolor in securing substitutes, for themselves, for instance in Leverkusen: pipes and other parts made of Vinidur, a new, acid-resisting plastic material, and had had them built in the factory Villiers St. Paul. The patents owned by the Francolor were examined and advice given by the I. G. Farben based on their own experience.

Exh. ter Meer 247, doc. 72,
Vol. III, p. 64-66 (-Schnitzler Doc. 84,
Vol. V, p. 15) Affidavit of Berthold Wenk,

The dye stuffs production of the I. G. Farben constantly decreased during the war. In spite of this the deliveries of dyestuffs intermediary products to Francolor had constantly risen during the war. More than 95 % of the French dyestuffs production stayed in France or was exported to Belgium, Spain or Portugal.

Schnitzler Exh. 86, Doc. 82

Vol. V, p. 12, Affidavit Oskar Lohr

As the dyestuffs which were manufactured of dyestuffs intermediary products, stayed almost completely in France, the deliveries of dyestuffs intermediary products of the I. G. Farben meant very important support of the dyestuffs business of the Francolor especially as there were amongst them in the years 1942 and 1943 special dyestuffs-intermediary products which the I. G. Farben did not under normal conditions put up for general sale.

The amount of products turned out by the French plants, which were a part of the Francolor increased considerably after signing of the contract.

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Exh. ter Heer 279, doc. 160, Appendix vol. II.
ter Heer XIV, page 36.

Alongst other productions that of synthetic tanning agents went up from 200 tons in the year 1941 to approximately 1 000 tons in 1943, the production of chemicals for rubber-products, factories from 200 tons to 1 100 tons, that of plastic,

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synthetic resins and adhesives from 300 tons to 4 200 tons. Already in this field the former peccotine production of the Francolor was doubled.

Testimony of the witness for Meer
transcript G. p. 13,366, E. . 13,037.

The above mentioned statements made about the advantages which the agreement brought to the French are further supplemented by the documents presented by the defense for the defendant Ambros in

Book 8 A Ambros,
Exhibit 172-175, doc. CA 001-004
p. 1-14

In the year 1942 the capital stock of the I. G. Farben was adjusted and increased. This adjustment of the capital stock provided the Francolor with further stock to the nominal value of 3,167,500 RM without a corresponding payment. This increase of capital stock gives the Francolor the option to subscribe to new I. G. stock in the nominal value of 3,167,500 RM or else that of selling its subscription privileges.

Schnitzler Exh. 68, doc. 65
" " 89 " 86

Book V, 21 - 29.

Francolor was, therefore, in exactly the same position as any of the other stockholders.

The note made by Dr. Kramer on 3 August 1942,

Schnitzler Exh. 90, Doc. 67,
Book V, p. 30-31,

shows that the French wished to participate in the capital stock increase and were anxious to subscribe to the new I. G. stock. The French government, through its Minister of Finance Cathala, and the Minister of Production Bichelonne, agreed with the rearmament. The fact that the French chose to subscribe to the new stock shows how highly they valued the shares and their shareholdings in the I. G. Farben.

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This is not astonishing if one realizes that I. G. Farben stock ranked amongst the best securities of Europe. The I. G. Farben appealed to the Reich Ministry of Economy in favor of the French, to allow them as an exception to the regulations to pay for the shares by way of the German-French clearing.

Schnitzler Exh. 91, Doc. 36
Book V, p. 36.

2. The production of Francolor - plants was only to a very small degree converted to war-time level. The German military resources did not profit by it.

The Francolor-plants remained primarily open during the war
dyestuff-factories. During the years 1941/1942/1943 the
dyestuffs production amounts to

4 674 tons

4 483 "

3868 "

the respective figures for the textile substitutes belonging
to the dyestuff field were

270 tons

404 "

1 969 "

and for organic intermediary products which are mostly used
for the production of dyestuffs and textile substitutes

17 053 tons

18 036 "

22 303 "

Exhibit ter Heer 279, doc. 160

Supplement volume II ter Heer XIV, p. 36.

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95% of the manufactured dyestuffs remained in France and in the export countries of the Francolor.

Testimony of the witness ter Meer

transcr. G. p. 13 365, E. p. 13 036

Schnitzler Exn. 86, Doc. 82,

Vol. V, p. 12, section 2.

In the long run it was impossible, considering trade-regulations valid in Germany and France alike, to exclusively manufacture dyestuffs, textile substitutes and products serving peace-time demands only in the Francolor plants. A program for the direct and indirect Wehrmacht (Army) demands had to be drawn up.

Actually neither powder nor explosives or poison gases were manufactured in a single instance. Only Centralit, Diphenylamin, and Mononitronaphtalin, a completely harmless preliminary product were manufactured. These products were delivered to Germany for further processing. The amount of this direct Army demand (which was made up by the products Centralit, Diphenylamin Mononitronaphtalin) was very small. It was in 1942 less than 5 % of the total production of Francolor. It was no more than a kind of window dressing.

Testimony ter Meer, transcript,
G.p. 13 366/67, English page 13 037/38.

See also Testimony Ambros of 1 March 1948.

"Practically all three Francolor-factories remained plants for private industry with the two exceptions: Mononitronaphtalin and Centralit."

transcr. German page 157, English page 6082/83

The so-called direct need of the Wehrmacht included products serving civilian purposes only such as: vulcanisation-catalysts, chemicals for the rubber-industry varnish-resins, plastics and adhesives (see the above quoted testimony of the witness ter Meer).

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3. No apparatus or machines were taken from the Francolor-
factories

Schnitzler Exh. 87, doc. 83
Vol. V. p. 13-14

4. No workers of Francolor were forcibly "deported" to Germany

Ambros Exh. 161 Doc. 04 810
Book, VIII A.p. 33-40

Testimony of the witness Ambros
transcr. G. p. 3091 ff B.p. 6016/17

Testimony of the witness ter Meer
transcr. G.p. 13377 ff 13552
Exh. p. 13046 and 13216

also Affidavit Dr. Oskar Lohr
Exh. ter Meer 279 doc. 160 Supplement
Vol. XIV, p. 36

5. Any nationalisation was not carried out in the Francolor plants.

ter Meer, transcr. G. p. 13 377
B. p. 13 046

Indictment section 110

6. After the "liberation" of France in 1947 the French
government obviously held the point of view that the
Francolor agreement had been voluntarily signed.

In Doc. Book V, Schnitzler Doc. 98, Ident. No. 101 I submitted
to the Tribunal an excerpt from a copy of the "Badische Zeitung"
of 4 November 1947 in which the French Government objected to
the handing over of the shares belonging to the I. G. Farben to
Kuhlmann, because "Kuhlmann had not acted under pressure
at the time of the foundation of Francolor".

This document was not admitted so that I was unable to produce
evidence that the French Government itself holds the point of
view that the Francolor agreement was signed voluntarily and
without pressure and was therefore legal; because only in that
case the French

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Government would have a cl in upon the stock. Under date of 22 December 1947 the defense made a request to the Tribunal to be allowed access to the French Ordinances and the evidence brought against FROSSARD, LUCHEMI and REISSER, for endangering the security of the State. Exh. 1261, FI-541, Vol. 58, G.I. 209-215, E.I. 184- 186.

These documents would have proved the statement of the Prosecution that the Franco-German agreement was signed under pressure to be incorrect.

Finally I wish to refer in a subjective relation to the testimony of the witness Oberregierungsrat Alfred HOFFMANN in the Reich Ministry for the Economy, Department Chemistry. On the occasion of a discussion of the proposed foundation of Franco-German, SCHNITZLER declared:

"He considered it necessary to treat the French Industry correctly and fairly and not to use any pressure because it would be necessary, after termination of hostilities, for the German and French industries to cooperate, which could only be done on a voluntary basis."

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17. En Count II C of the Indictment ^{POLAND}

Section 97 - 100 of the indictment the prosecution charges the defendant v. SCHNITZLER and other defendants with having plundered the entire chemical industry in Poland. It alleges in section 100 that: the I.G. Farben "made the whole chemical industry of Poland part of its own corporation".

The prosecution tried to substantiate its statement by Document Books 55 and 56 and by a number of individual documents which it submitted on the occasion of the cross-examination of the defendant and the defense witnesses who had been called by the defense. It was unable to bring the desired evidence; on the other hand the defense has proved that the charges of the prosecution are incorrect. The prosecution states:

1. that the I.G. Farben had already before the beginning of the Polish Campaign, made the necessary preparations for carrying out its plan to "absorb the chemical industry of Poland."

Section 98 of the Indictment.

2. The I.G. had had "an eye on the Polish chemical factories."

Trial Brief part II, G.F.19, P.20

i.e. it had from the very first desired to acquire them:

3. "under trusteeship of the I.G." the fate of the three Polish chemical plants would have been "as planned by the I.G. Farben even before Poland was invaded."

section 99 of the Indictment

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1. the provisional management had been carried out by the I.G. Farben and in its own interest and the I.G. Farben "continued" to consider the commissars "their own agents."
Trial Brief part III, G.I.16, E.I.20

4. that the acquisition of the dyestuffs factory Scrute situated in the Warthegau by the I.G. Farben had been illegal

5. that the closing down of the dyestuffs factory Wola in the Government General had been caused by the I.G. Farben because of the Jewish descent of its owner;

6. that the acquisition of the Betoczynskite acid - plant of the dyestuffs factory Wola had been illegal

7. that the acquisition of a 50% participation in the dyestuffs factory Winnice situated in the Government General had been illegal;

8. that the acquisition of the antrachinon plant of the dyestuffs factory Winnice had been illegal

9. that the I.G. Farben had participated in carrying out the Germanisation plan in Poland.

Preliminary Remarks.

In the following lines the above quoted 9 accusations made in the indictment will be treated relating to their factual and legal aspects separately and according to sections. Concerning the legal aspect I also wish to refer to the elaborations made by me in the Final Plea, i.e.

a) sections 5-7 and sections 20-24

where the general legal questions are discussed which are of importance for Count II of the Indictment and

b) sections 28-31

which contain additional statements especially concerning the Polish cases.

ad 1

18. As proof for the statement that the I.G. Farben had already before the war prepared its plans for incorporating the chemical industry of Poland into its own concern, the prosecution submitted 3 excerpts from a report No. 3609 of the Department of Political Economics of the I.G. Farben of 28 July 1939 which gave in one short page each a description of the organization, and the most important products of the Polish dyestuffs factories Beratz, Winnica and Wola.

Exh. 1135 NI-9151)

Exh. 1136 NI-9154) - vol. 55 G.P. 82 ff

Exh. 1137 NI-9155) E.P. 50 ff

The defense has proved that such reports of the Department of Political Economics were ordinary routine work as is done and has to be done by every larger concern, the interests of which reach beyond the borders of its own country, see the list of such reports

ILGEBER Doc. 44, Exh. 52,
Vol. III, P. 1.

The numbering adhered to in these reports proves that in the year 1939 something like 450 such reports had been drawn up. (The first report for instance, which was made in 1939, bears the number 3237, whereas the last report dating from the same year bears the number 3634). The infinitesimal importance of the Vowi report concerning Poland in connection with the total interests of the I.G. Farben is further to be seen from a comparison with the number and subjects of the reports made at that conference which are included in the minutes of the 51st Vowi conference of 16 August 1939.

Exh. 855, NI-7086, Vol. 47, G.P. 46, E.P. 19

The minutes of this one single conference contain a collection of 64 subjects, some of which were

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treated by the I.G. Farben itself and some of which had been entrusted to others for the drawing up of these reports, which concerned themselves with a colorful mass of heterogeneous subjects from "The number of goats existing in the world arranged according to separate countries" down to "the prices for high-grade scrap-iron in Great Britain." The witness for DEER is unable to remember ever having read this particular report upon Poland; he describes it as the work of a journalist. Trans. G.I. 13431, E.I. 13143-44

The witness SCHUB qualifies the report as an uncalled for effort (Fleissaufgabe) and, in his statement,

Trans. G.I. 6118, E.I. 6061

calls attention to the fact that the report contains factual inaccuracies and that he, the witness, had had better information, for instance the large four-language edition of the Handbook for Commerce and Industry in Poland and the especially complete Handbook of Chemical Industry in Poland.

As can be seen from other documents submitted by the prosecution

Exh. 1133, NI-5447, vol. 55, G.I. 46, E.I. 46

NI-8457, Exh. 1138 ff, vol. 55, G.I. 65, E.I. 54

the I.G. Farben did not take an interest in Polish factories until after the outbreak of war. Before the outbreak of war the I.G. Farben had not made any plans concerning the Polish dye-stuff-industry.

Trans. G.I. 13431, E.I. 13142

Concerning the rest of the Polish chemical industry the prosecution has not even tried to submit evidence.

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The witness Hermann Schwab gave a summary report about the Polish chemical industry as a whole in his testimony of 29 January 1948.

Trans. G.P. 6111-13., E.P. 6053-56

The Polish dyestuffs industry holds 6th place within the Polish chemical industries and represents no more than 4 % of the entire chemical industry of Poland; the three dyestuff factories Beruta, Wola and Winnica which are discussed in the documents introduced by the prosecution are again only part. i. e. 5/8th of those 4 %. Apparently the charge was extended to the whole Polish chemical industry for purely propaganda purposes only.

Ad 2:

19. To prove the correctness of its allegation that the I. G. G. "coveted the Polish chemical factories" i. e. that it had from the very beginning aimed at the acquisition of the dyestuff-plants the prosecution introduces three documents from September 1939 i. e.

- a) a telegram from Dr. v. Schnitzler to Director Dr. Krueger

Exh. 1138, NI-8458, Vol 55, G.P. 85, E.P. 54

- b) a letter from Dr. v. Schnitzler to the Reich Ministry for the Economy of 14 September 1939
Exh. 1139, NI-2749, Vol. 55, G.P. 87, E.P. 56

- c) a letter from the Reich Ministry for the Economy to Dr. v. Schnitzler of 21 September 1939
Exh. 1140, NI-1093, Wo. 55, G.P. 94, E.P. 60

Neither in Schnitzler's telegram of 7 September 1939 nor in his letter of 14 September 1939 is there a question of the acquisition of Polish dyestuff's-factories. There is not even a suggestion to that effect. It is only suggested that there ought to be specialists employed in assuring the efficient handling in these factories of supplies and finished products and of the new products; the reason

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why the introduction of such specialists was suggested was, as is stated in the next to the last paragraph of the letter of 14 September 1939, the consideration that

"every lost day might be the cause of serious damage done, as by sabotage-acts and inefficient and fraudulent salesirretrievable assets might get lost."

The I. G. Farben has never claimed any rights for itself. On the contrary, the letter from the Reich Ministry for the Economy of 21 September 1939,

Pres. Exh. 1140, Vol 55, G.P.94, E.P.60

which contains the news of the appointment of Messrs.

Schwab and Schoener as commissars for the dyestuffs factories Beruta, Wola and Winnica says on the contrary:

"I wish to emphasize the fact that by appointing these commissars the situation concerning the ownership is not changed in any way and that this appointment cannot be considered a preparation for an alteration of the ownership situation. Most especially, this appointment of members of the personnel of the I. G. Farben will in no way create a claim to a change of the ownership situation at a later date in favor of the I. G. Farben. The gentlemen entrusted with the provisional management are therefore requested to manage the plants exclusively under trusteeship for the account of the present owner."

(Underlined by the defense counsel)

While the prosecution has not only been unable to prove its allegation that the I. G. Farben was from the very beginning interested in the acquisition of the Polish dyestuffs-factories, these documents (pres. Exh. 1138-39, Vol. 44) make it clear that the I. G. Farben could not even have such intentions. Schnitzler's suggestion of 7 Sept.

1939 to employ specialists was not only meant for the purely Polish factories, Beruta and Wola, and for the half-French and, as will be shown later on, half-German dyestuffs-factory Winnica, but also for the purely Swiss factory pabianice.

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This was, according to the testimony of the witness Schwab, the biggest Polish dyestuffs-factory.

Trans. G.P. 6111, E. P. 6053.

The idea that the I. G. Farben might have tried to requisition for itself the Pabianice which belonged to a neutral firm seems absurd not only because the I. G. Farben and the Swiss dye-stuff's-manufacturers had had a cartel agreement ever since 1929 but also because the I. G. Farben suggested to the Swiss firm on its own accord to have its interests represented by German Reich trustees if it wished to do so. (Pres. Exh. 1140) The Swiss owner of the Pabianice expressed its thanks for this suggestion without, however, accepting it; the Reich Ministry for the Economy thereupon refrained from appointing commissars for Pabianice.

The intention behind the suggestion of the I. G. Farben to appoint trustees for the Polish dyestuffs factories was therefore not that of acquisition, but that of preservation of industrial assets and the prevention of dissipation. The witness ter Meer made the following statement concerning this question:

"Yes, I always consider it sensible that measures should be taken by which order and existing assets will be preserved"

Trans. G.P. 13434, E. P. 13145

The witness Schwab declared that the basic thought which was behind all actions of the I. G. was not the acquisition of Polish dyestuffs-factories but

"to keep Poland economically alive".

Trans. G.P. 6119, E.P. 6061.

He describes the I. G. Farben's reasons for its proposal and emphasizes in particular the fact that

1. the contractual obligations between the I. G. Farben and the Polish dyestuffs-factories Boruta and Wola were based on the market-regulation-agreement of 1934.

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transfer. G. P. 6119, E. P. 6061

and

2. the interest of the I. G. Farben in the dyestuffs factory
Winnica in which the I. G. Farben held 50 % of the shares.
trans. G.P. 6157 and 6163, E.P. 6099 & 6104

The suggestion made by Herr v. Schnitzler to appoint
trustees in order to prevent dissipation of assets, under
prevailing war-time conditions was therefore not prompted
by the desire for new acquisitions but by the desire to
safeguard its own business connections and assets and for
the sake of general fairness in business between contracting
partners.

Ad 3

20.

The indictment alleges that the Polish dyestuffs-
factories were "under trusteeship of the I. G. Farben" The
prosecution itself has introduced counter-evidence against
this. It is true that the letter from the Reich Ministry
for the Economy of 21 September 1939 says (paragraph 1
of the letter) Prosec. Exh. 1140, Vol 55), that it was due to
the "suggestion" of Dr. v. Schnitzler that the Polish fac-
tories Boruta, Wola and Winnica were to be provisionally
managed, but the same document contains the statement that
the trustees would be appointed by the Reich Ministry for
the Economy and that the officials entrusted with the pro-
visional management would have to administer the plants
entirely,

"for the account of the present owner."

The same letter contains also the order for the trustee
to report to the responsible chief of the civilian adminis-
tration in

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Poland and would have to make a fortnightly report about their activities to the Reich Ministry for the Economy. In order to give a clear picture of the connections of the two commissars with the Reich Ministry for the Economy the defense has submitted the first report of the trustees Schwab and Schoener of 6 October 1939 (which was not only available to it when the archive of the prosecution was made available to the defense) as

Schnitzler Doc. No. 221, Exh. 220, Vol. XIII, P. 15.

The report starts as follows:

"Based on instruction issued to us from Berlin on 27 September" it further contains the following reference:

"We shall ask the chief of the civilian administration for help and advice"

and finally:

"Report on work taken up at the firm... 'Boruta' will follow as soon as possible."

Nor could the allegations made by the prosecution based on the affidavit of the witness Szpilfogel

Exh. 1159-NI-10416, Vol. 56
G. P. 60a, E. P. 25A

that Messrs. Schwab and Schoener acted as commissars for the I. G. Farben could not be upheld by the witness in his cross-examination.

Trans. G. P. 2649, 2650, E. P. 2651

He had no personal knowledge of whether Schwab and Schoener acted on behalf of the I. G. Farben or not. He could not remember the contents of their power of attorney.

Nor is the interoffice memorandum of the I. G. Farben of 17 November 1942

Exh. 1157, NI-7371, Vol. 56, G. P. 54, E. P. 22
proof of the I. G. Farben's having been the trustee of the Polish dyestuffs-factories. According to the testimony

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of the witness Schwab this letter constitutes an explanatory statement of an I. G. Farben employee in Leverkusen who had quite obviously no firsthand information about the true facts.

Trans. G. P. 6120-21, E. P. 6063

On the other hand the witness Schwab has given a detailed description of the actual conditions, i. e. who were his superiors; - invariably State authorities - , which were his duties with reference to them, which were the limits of his responsibility, to whom he had to render account, and in which way the authorities in command supervised the trustees. Furthermore, Schwab described how he personally and not the I. G. Farben was responsible for any offences against regulations issued by the authorities, i. e. he, as an administrator, and that he and Dr. Schoener were excused from service by the I. G. Farben while they were carrying out their duties as trustees. He claims that the I. G. Farben had no right to issue instructions to them.

Trans. G. P. 6119-20
E. P. 6061-62

Dr. ter Meer stated on the witness-stand

Trans. G. P. 13433, E. P. 13145

that Dr. Schoener turned to him for advice several times, but that he had refused to give such advice pointing out to Dr. Schoener that he himself was the commissar and would therefore have to decide for himself.

The statement of the witness Eckert too implies that the commissars were responsible only to the State as their employer and not to the I. G. Farben.

Trans. G. P. 3190, E. P. 3168

The fact that the two trustees were selected from the I. G. Farben personnel by the Reich Ministry for the Economy

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is a natural result of the fact that the I. G. Farben was the greatest dyestuffs producer in Germany. Schnitzler's telegram of 7 September 1939 (Pros. Exh. 1138) even contains the statement: "only the I. G. Farben is in a position to nominate these experts." This fact was also emphasized by the statement made by the witness ter Meer on 3 May 1948.

Trans. G. P. 13432, E. P. 13144

The prosecution has not proved that the I. G. Farben had claimed any right to issue instructions because of the fact that Schwab and Schoener were I. G. Farben employees. In all occurrences which took place after the nomination as trustees of Schwab and Schoener we shall therefore have to clearly distinguish between

1. that which was done by the I. G. Farben and
2. that which was done by the trustees as agents of the Reich authorities.

The actions of the trustees have nothing to do with this trial.

Ad 4

21. The prosecution alleges that the acquisition of the dyestuffs-factory Boruta by the I. G. Farben was illegal.

The fact has not been queried either by the defense or by the prosecution, that the factory Boruta near the city of Lodz lies in the Polish textile center, and therefore, belongs to that part of Poland which was, after cessation of hostilities between Germany and Poland, incorporated into Germany under the name of "Warthegau" because this territory had to a large extent belonged to Germany before.

The Boruta was an A. G. (stock corporation). The capital stock amounted to 3,75 millions of zlotyz (1 zloty=0.47 RM) and

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from October 1939 amounted to 0.50 RM). The largest stockholder was the State-owned Landeswirtschaftsbund in Warsaw, the stockholdings of which amounted to 80.35 %. The "Landeswirtschaftsbund" was, as shown by

Schnitzler Doc. No.123, Exh.126
Vol.VII P. 96.

"a government institution". The Boruta will therefore have to be considered State-owned property in the sense of the Hague Rules for Land Warfare.

One must deduce from the statement of the witness Schwab
.Trans. G. P. 6121, E.P. 6063-64

that he found the Boruta undamaged on the occasion of his first visit there on 3 October 1939. The management had escaped on orders of the Polish government with its complete cash in vault, of approx. 400,000 zloty, all bills of exchange, checks and the most important business files; the cashier had only approximately 20,000 zloty on hand.

Work in the manufacturing plants, first of all of dyestuffs, and the attendant preliminary and intermediary products, also catalysts and anti-oxidants for the rubber-industry, was taken up again in the interest of the civilian population (Polish workers and consumers). The local plant for the production of explosives and (picric acid and dinitronaphtalyne) and tear-gas, which had worked for the Polish Defense Ministry was shut down.

The difficulties encountered by the provisional administration were mainly of a financial nature. The 20,000 zloty which had been left behind barely covered the wages for the current week. The plant was therefore on the verge of a financial catastrophe. The trustees therefore tried as the witness Schwab describes it.

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to get money from various sources, first of all by collecting all outstanding debts which brought, however, only momentary relief. They also tried to get assistance from the Chief of the civilian administration who had no better answer to their request than this:

"Trustees are there to help themselves". Nor could the chief of the Trustee-Office Ost in Berlin, Dr. Herle, under whose supervision the Boruta had been put pending further arrangements and whom the trustees had approached for a loan of 200,000 marks in November 1939, help them. A banker's credit was not obtainable because the Boruta was heavily mortgaged. In the meantime the operating expenses of the Boruta had considerably risen because of the necessary purchase of raw products which nobody wanted to deliver on credit. For this reason the trustee Schwab turned to the employee of the I. G. Farben, Dr. Deissmann, who was at that time a soldier in Poland, with the request when he went back home on furlough to describe to the officials in the I. G. Farben the difficulties of the Boruta and to ask them for help. The minutes of the meeting of the Commercial Committee of 20 October 1939,

Exh. 1133, NI-5947, Vol. 55, G.P. 46, E.P. 32 contain a summary of the report by Dr. Deissmann and state: "Dr. Deissmann is instructed to inform the Messrs. Schwab and Schoener of the attitude held by the Commercial Committee i. e. that the I. G. Farben is in principle prepared to found a holding company (Auffanggesellschaft) to carry on the Boruta on a trusteeship basis inasfar as there was any security that interest on the advances given by the I. G. would be paid and the loan itself eventually paid back." (underlined by the defense counsel)
This quotation proves that also at that time the I. G. Farben had no acquisitive tendencies and was even prepared to

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was prepared to help the enterprise, on which it could not exercise any decisive influence, out of a difficult situation. Seen from the economic standpoint, it is natural that I.G. Farben tied up the guarantee of help to certain business securities for interest and repayment of the credit, for I.G. Farben was completely clear about Boruta's financial situation because SCHWAB and described the precarious situation via Dr. DEISSMANN and had asked for help. How I.G. Farben regarded the situation is shown by its letter to the Reich Ministry for the Economy, dated 10 September 1939 (Prosecution Exhibit 1141, NI-8380, Vol. 55, G.p. 97, E.p. 62) in which it states:

"The Boruta is practically without working capital. The assets are mortgaged as a loan to the Polish National Landeswirtschaftsbank with a total of Zloty 6.1 millions. Seen from the point of view of private industry, this firm would be on the verge of bankruptcy."

(Underlinings by defense counsel).

The idea that the company was on the verge of bankruptcy is correct because the capital stock amounted to only 3.75 million Zloty while the mortgage on the factory alone amounted to 6.1 million Zloty.

The plan aimed at that time of a receivership company which was to lease the Boruta

Exh. 1141, NI-8380, Vol. 55, G.p. 97, E.p. 62,
and Exh. 1142, NI-8373, Vol. 55, G.p. 100, E.p. 63,

did not become a reality. In spite of this, I.G. Farben did help on the urgent request of the trustee SCHWAB, who eventually had only enough money for one day's wages and whose monthly expenditures amounted to a turnover of 135,000 marks to 250,000 marks.

Trans. G.p. 6126, E.p. 6069.

SCHWAB had been at I.G. Farben in Frankfurt in May 1940 and had there made the proposition that I.G. Farben distribute

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contracting orders to the Beruta and grant an advance on them, I.G. Farben agreed to this proposal and turned over an initial advance of 100,000 marks to the Beruta, without having securities of any sort for this. In all, as may be seen from the testimony of the witness SCHMAB and against which the prosecution has not attempted to bring any proof to the contrary, I.G. Farben distributed contracting orders for more than 400t of intermediary products and approximately 500 t of dyes and actually paid a total of RM 1,000,000 as of November 1941 when the purchase agreement concerning the Beruta was concluded. I.G. Farben during this time did not have any sort of contract rights or securities for the Beruta as such. During the negotiations over the projected lease agreement it became more and more apparent that it would be possible to continue the Beruta only if considerable new funds were invested,

cf. also Affidavit Dr. Max WICKLER,
SCHNITZLER Doc. No. 124, Exh. 127,
Vol. VII, p. 99.

The Trustee Office East was not willing or not in a position to advance the funds necessary for this purpose on its own initiative,

cf. also testimony SCHMAB; Trans. G.p. 6127,
E.p. 6070,

It was impossible to procure the funds necessary for investment purposes through the usual economic or banking channels because the factory, as was mentioned above, was mortgaged for almost double the amount of the capital stock. For these purely economic reasons the Main Trustee Office East decided not to conclude a lease agreement with I.G. Farben but to offer it the factory for sale, because it maintained, and justifiably so - seen from the economic point of view - that it is impossible

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to expect the lessee in the case of such a heavily mortgaged factory to put millions into the firm without any sort of return. The head of the Main Trustee Office East, Dr. Max WINKLER, stated with regard to this:

"Dr. HERLE informed me that after close examination he thought it would be necessary to sell the plant to the I.G. Farbenindustrie A.G. He advised against a lease, which had also been considered and to which the I.G. had declared its agreement, because a lease would be very difficult and leasing would endanger the assets of the company which were decreasing."

The witness further testified:

"On the strength of this report I declared my basic agreement with the sale. In this I was primarily motivated by my obligations as a trustee to conserve the investments and capital of the Polish owners and to make the continued operation of the plant possible. The idea of a sale instead of a lease came, so far as I remember, from Dr. HERLE and Gen. Rat Dr. M. HENKE, whom I have already mentioned and who was a first rate expert. These gentlemen had made the proposal to the I.G. and the I.G. had accepted the proposal."

SCHNITZLER Doc. No. 124, Exh. 127,
Vol. VII, p. 104-105,
also Exh. 144, NI-2998, Vol. 55
G. p. 109, E. p. 71.

According to this it has been established that the decision of the Main Trustee Office East to sell the Berute can be traced back exclusively to this government office and its economic considerations. The witness WINKLER describes in detail in his testimony why he as a trustee had to decide to sell in an exceptional case and among other things says in this connection:

"It was particularly in view of this large, necessary investment that a sale seemed more correct than a continued trusteeship, if the capital of the owners was to be saved."

SCHNITZLER Doc. No. 124, Exh. 127,
Vol. VII, p. 105.

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The witness SCHULB describes the reasons at the bottom of the proposal of the governmental trustee office in a similar manner:

"The existence of the numerous enterprises under trustee administration was threatened by the difficult financial situation and the Trustee Office had not advanced or did not want to advance on its own accord the funds necessary for further operation. I remember that in the commentaries on the law concerning the confiscation of Polish property it was stated that when enterprises are subject to a bureaucratic administration, a gradual dissipation of the investments is not to be avoided and that for these reasons the sale of the enterprises to seriously interested parties was also provided."

Trans.G.p.6127,E.p.6070,

as purchase price, I.G. Farben proposed the amount of RM 3,200,000, with the former yearly turnover of the Berata of Zloty 6,200,000 - RM 3,000,000 in 1937 as a basis. The standard, yearly turnover of a dyestuff factory is to the value of a dyestuff factory as 1 is to 1, is a generally recognized principle of evaluation for dyestuff factories and was used by I.G. Farben in other cases as well, in which it acquired dyestuff plants by purchase. In spite of this, I.G. Farben agreed to the purchase price of RM 5,000,000 demanded by the Main Trustee Office East, which the latter took as a basis, with reference to the formal book value of the installation and

*) The passage mentioned by the witness from the commentary (FUNDTNE - HAUBERT, Sec. 56 I b.p. 19-20) reads:

"This measure was necessary so that the gradual dying out of this enterprise, which would be unavoidable in time with a more administrative custodianship, or even a complete sale and thereby the internal undermining of the enterprises, might be avoided..... By all of these decrees, provision is made in a particularly painstaking manner that the pieces of property can neither be removed nor sold for less than their value, and that finally the possibility is also guaranteed of falling back on regular records by the regulation of the manner and the extent of the indemnification which is reserved for losses of property in carrying out this order."

(underlining by the defense counsel).

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the supplies at that time. The prosecution did not even claim that the price paid did not correspond to the value of the Boruta.

During the course of the purchase negotiations, still other competitors appeared, namely the Gutbrod brothers, who operated a varnish factory of moderate size in the vicinity of Frankfurt/Main and who had very good connections with the SS. The Gutbrod brothers, however, were not technicians and they were also not in a position, soon from a financial viewpoint, to run the plant. According to the testimony of the witness SCHULB on 29 January 1948

Transc. G.p.6128, E.p.6071

they would have managed the plant poorly, squandered the investments and the supplies and the final result would have been shutting down.

With reference to the Gutbrod brothers, Dr. Max WINBLER states the following in his examination on 10 April 1948:

"According to the information we received, Gutbrod were not experts in this field. I didn't receive good information about them otherwise, and I was convinced that they did not have the necessary financial means to pay for the enterprise and to expand it, which was a prerequisite for continuing the enterprise."

Transc. G.p.14346, E.p.14174-75.

The same is testified to by:

Dr. ECKERT on 31 October 47	Transc., E.p.3191, E.p.3169,
Dr. KUEFLER on 28 October 47	" G.p.2937, E.p.2917,
Dr. ter MEER on 3 May 1948	" G.p.13442, E.p.13153-54.

The same witnesses state that only I.G. Farben was in a position technically as well as financially to give the Boruta the necessary support for continuing in operation. By continuing to operate the plant, it not only guaranteed the satisfaction

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of the textile industry at Lodz, but also guaranteed that the workers and employees of the Beruta would continue to be employed. The witness STRUSS states in this respect on 9 October 1947,

"that I.G. Farben thereby also performed an act of social welfare", Trans.G.p.1874, E.p.1886.

It is interesting that the prosecution on the occasion of the cross-examination of Dr. KUEPFER on 28 October 1947 had to admit that the Beruta was provided for in the best manner possible by I.G. Farben. I quote Mr. SPEECHER:

"May I state that the prosecution will stipulate to the fact that there is no question but what I.G. Farben could run this property more efficiently than the Gutbrod Brothers or anyone else so far as we know in all of Germany".

(underlining by defense counsel.)

Trans.G.p.2938, E.p.2,17.

ad 5:

22. The prosecution claims that the dyestuff factory Wola, located in the Government General, was shut down at the urging of I.G. Farben, because of the Jewish origin of its owners. The prosecution bases this claim on

Exh.1139, NI-2749, Vol.55, G.p.87, E.p.56,

the letter already mentioned from Dr.v.SCHNITZLER to the Reich Ministry of the Economy dated 14 September 1939, in which it states:

"The chemical factory Wola Krzysstoporska is a non-Aryan family enterprise",

cf. indictment, Sec.99.

The prosecution overlooks three things in this connection:

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1. The statement in the letter of 14 September 1939 concerning the Wola does not contain a discrimination against the enterprise for racial reasons, but rather only a description of the legal status as a family enterprise and in this connection, as the witness SCHMAB also states,

Trans.G.p. 6138, E.p. 6081,

the determining of whether it is Aryan or non-Aryan should not be omitted,

"since from 1938 on a distinction was made between so-called Aryan and non-Aryan enterprises in the Reich. If that had been omitted, we certainly would have had to count on a discussion with the Ministry, especially since it was a case here of individual property."

In the same letter the legal position of the other enterprises, Beruta, Winnica and Pabianice is also mentioned and the connections of the individual plants to the existing cartel agreements and/or in the case of Beruta and Wola to the Market Regulating Agreement with the Triple Cartel. The quotation mentioned regarding the Wola is accordingly no evidence of a possible unfriendly attitude on the part of I.G. Farben with regard to the Wola or to its owners, particularly not if one reads the sentence in connection with the other statements.

2. When the trustee SCHMAB inspected the Wola for the first time on 20 October 1939, it had already been shut down since the beginning of the war. It was damaged by artillery and was partially burned out. The plant was in such a poor condition that it could not have been operated. There were no longer any means of transportation available. A survey of the external condition of the enterprise is given by the documents

SCHNITZLER No.1, Exh.1, Vol.VII, p.108,
and SCHNITZLER No.7, Exh.7, Vol.VII, p.109,

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The offices had been looted by mobs, the business papers scattered on the floor, the main records had been taken to Warsaw by Herr Dr. SZPILFUGEL, there was no cash at all,

Trans.G.p.6131-33, E.p.6074-77.

For this reason, the Wola had shut down because of the war, and could have been put into operation again only with considerable expenditures. The prosecution did not claim and proved still less that I.G. Farben was obliged to take upon itself expenditures of that sort for the Wola.

3. The Wola was the smallest of 4 Polish dyestuff factories. The operating capital invested amounted to approximately 1,700,000 Zloty,

Trans.G.p.6112, E.p.6055.

According to information from the Allgemeine Kreditbank in Warsaw, to which the trustee SCHNAB turned,

Trans.G.p.6133-35, E.p.6077,

the Wola was heavily in debt there. There were still claims to redress from discounted drafts to the amount of 255,000 Zloty.

From the technical point of view, the Wola was ineffectually organized. It was located 13 km away from a railroad station, had no means of transportation of its own and had out-moded factory installations, (cf. pictures SCHNITZLER Exh.1 and 7).

Trans.G.p.6133, E.p.6074.

In addition to this, there were still more difficulties with respect to the technicalities of selling. The Wola had sold its products mainly to the two large textile centers, Lodz and Bialystok before the war. Lodz was in the Warthegau, where the German prices applied from the incorporation on. These were on the average 20 to 40% under the former

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prices applying in Poland. Bielystok was in Russian hands and the same was true for the center of the leather industry, Lemberg, where the Wola had formerly delivered another considerable part of its production. The territory remaining to the Wola thus, was only the Government General, which, however, was not a sufficient market for dyes. Accordingly, the business prerequisites for putting the plant into operation again were not there. The decision to put the Wola into operation again, moreover, rested with the trustees. The vote of the trustees to let the Wola, which was already closed down, remain in that condition was seconded by the Landrat of Petrikau in whose region the factory was located.

Trans.G.p. 6134-35, and p. 6161,
E.p. 6078-80 and p. 6104.

The attempt of the prosecution to make I.G. Farben responsible for the closing down is accordingly unjustified for 3 reasons:

- a) because the Wola had already been shut down by the owners themselves since the beginning of the war,
- b) because the plant could not be put into operation again for technical and commercial reasons,
- c) because I.G. Farben was not supposed to decide about the plant, but rather the trustees as representative of the Reich authorities.

It must be stated quite clearly here that I.G. Farben had nothing to do with the Wola case; it was neither owner nor lessee, trustee or administrator. It had no legal relation to the firm at all.

The fact that the owner of the Wola, Dr. SZPILFOGEL, was a "non-aryan" was in no way causal in this connection, either for the attitude of the trustees with regard to the plant or for the

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attitude of the defendants here with respect to Dr. SZILFÖGEL. The case in chief as a whole, thus both the examinations of the defendants and the witnesses and the documents submitted by the defense, has shown, how SCHNITZLER, just as the entire I.G. Farben thought about the racial question. The attitude of I.G. Farben in this question was the exact opposite of an anti-Jewish attitude. Wherever I.G. Farben could help in this respect, it did help, just as the affidavits submitted for SCHNITZLER himself:

Erich DOMBROWSKI	SCHNITZLER	Doc.No.165,Exh.168, Vol.IX, p. 55,
Rolando BALDUCCI	SCHNITZLER	Doc.No.166,Exh.169, Vol.IX,p.57,(sec.4),
Benne REIFENBERG	SCHNITZLER	Doc.No.169,Exh.172, Vol.IX,p.63,
Auguste BRUNNBERG	SCHNITZLER	Doc.No.175,Exh.178, Vol.IX,p.77,
Olle ROSENGART- SCHNITZLER	SCHNITZLER	Doc.No.209,Exh.195, Vol.XI,p.56,
Richard v.SZILVINYI	SCHNITZLER	Doc.No.214,Exh.198, Doc.No.215,Exh.199, Doc.No.216,Exh.200, Vol.XI,p.64,67, and 69.

and the witnesses' statements regarding his relation to the von WEINBERG brothers, e.g. SCHULB on 29 January 1948,

Transc.G.p.6144, E.p.6087,

show that Dr. von SCHNITZLER was free from any National Socialist indoctrination in this area.

There is no doubt about the fact that the fate of the former owner of the Vale, who lost his family and all his property during the war and as a result of political conditions must live as a refugee in Switzerland today, is one of the most difficult which can happen to a man, and nothing more needs be said

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about it. The prosecution attempts to deduce that Herr v. SCHNITZLER's character was at fault from the fact that the defendant v. SCHNITZLER did not directly reply to the letter sent to him by Herr Dr. SZFILF GEL on 16 January 1941

Exh. 115, NI-707, Vol. 56, G.p. 51, E.p. 19, but directed it to trustee SCHWAB. It attempts to conclude from this that Herr v. SCHNITZLER did not want to help, although he could not do this. By the testimony of the witness SCHWAB it has been proved that the immediate forwarding of the letter of Dr. SZFILF GEL to SCHWAB - this happened on 24 January 1941 - was interpreted by the letter to mean that he should help if he could,

Trans. G.p. 6143, E.p. 6086.

Herr SCHWAB had known Herr v. SCHNITZLER from 1912 on and in his examination he described the defendant's readiness to help in private matters as well as in business matters. SCHWAB actually did undertake to do everything it was possible for him to do upon receiving the letter. This is also shown by the fact that he answered the letter of Herr v. SCHNITZLER as soon as 27 January 1941. He had previously already intervened with all the authorities who might perhaps have helped, but unfortunately with only very slight success. For further steps he needed a certificate from the eldest of the Judenrat regarding the conditions of Dr. SZFILF GEL's property, and the letter was supposed to procure this for him. Dr. SZFILF GEL, in spite of two letters sent him by SCHWAB - SCHWAB still is even able to give the exact dates for them.

Trans. G.p. 6145, E.p. 6087, -

did not send back the requested certificate. To what this

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may be attributed cannot be completely seen even in the examination of the witness Dr. SZFILFOGEL, who gives contradictory evidence about this,

Trans.G.p.2653, E.p.2654.

Neither the trustee SCHWAB nor Herr v. SCHNITZLER had the possibility of coming into direct contact with Dr. SZFILFOGEL, who had been brought to the Warsaw Ghetto in November 1940. The witness SCHWAB and the witness Dr. SZFILFOGEL described in their examination how the Ghetto was shut off from the world under a strict guard.

Trans.G.p.6145; E.p.6088,
and Trans.G.p.2657, E.p.2657.

The prosecution has also not taken into consideration the fact that there was very strict censorship of the correspondence between Germany and Poland, and that anyone who wanted to help a Jew - and moreover a Jew in the Ghetto - could do this only secretly or by devious routes. Thus it is understandable if the letter, when read subsequently, is not written in a style that would really correspond to SCHNITZLER's mentality. The words of the witness SCHWAB also agree with this:

"I have known Herr v. SCHNITZLER for many years and knew that he had to express himself cautiously the letter could fall into the hands of the censor and from there could go to the Gestapo - and I understood perfectly that he wanted to help Herr SZFILFOGEL, whom he had known personally since 1934 from all the negotiations with the Polish group."

Trans.G.p.6143, E.p.6085-86.

Accordingly, the prosecution did not prove that Herr v. SCHNITZLER could have done more than he did; rather, the defense has proved that everything was done by the trustee and Herr v. SCHNITZLER which could possibly be done under these circumstances for a victim of National Socialist racial legislation.

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prosecution witness Dr. SZPILFOGEL even states explicitly that with respect to what is termed persecution and extermination of the Jews, he does not want to accuse the defendants:

"It is obvious that that is not the fault of these men of I.G. Farben."

Trans.G.p.2658, E.p.2658.

Ad 6:

23. The prosecution, in addition to this, attempts to charge the defendant v. SCHNITZLER and I.G. Farben with the economic losses which Dr. SZPILFOGEL suffered in connection with the war and especially with the measures introduced by the Reich authorities. It specifies in this connection in the affidavit by Dr. SZPILFOGEL (Exh.1169, NI-10416) and in documents Exh.1153, NI-8397 and Exh.1154, NI-8778, the confiscation of his house in Warsaw the estate in Wola, the house in Otwock, his auto and his dyestuff supplies, as well as a beta-cynaphtic-acid plant. As regard the confiscation of these things, it cannot be attributed to I.G. Farben but to the official decrees issued for the Government General,

Pres.Exh.1125 to 1128, Vol.55, G.p. 1-31,
E.p. 1-13,

and SCHNITZLER Exh. 2, Vol.VI; p.94
" " 106, Vol.VI, p.90,
" " 107, Vol.VI, p.100.

The trusteeship for these things was not in the hands of I.G. Farben, but of the commissioners appointed by the Reich Ministry of the Economy, later confirmed by the Government General, Department Economy/Trustee Office Cracow.

Apart from the Beta-cynaphtic-acid plant, which will be treated in the paragraph following, the prosecution

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did not prove that I.G. Farben acquired any of these things. The exact opposite is revealed by the testimony of SCHWAB on 30 January 1948,

Trans.G.p. 6154, E.p. 6096.

The trustees settled with their superior authorities with respect to these objects.

Trans.G.p.6120, E.p.6062,

and, as was seen from the cross-examination of the witness, Dr. SZPILFEL, his statements in the affidavit (Proc.Exh.1159) were only suppositions, since Dr. SZPILFEL had no way of knowing the internal relations between the trustees and their superior authorities,

Trans.G.p.2649-52, E.p.2650-52.

The President of the court finds with regard to this during the cross-examination of the witness Dr. SZPILFEL on 23 October 1947:

"It is quite obvious that he knows nothing about this."

Trans.G.p.2652, E.p.2652.

The Beta-exynaphtic-acid installation of the Wela was a small apparatus for the production of dyestuffs. It was put into operation at the Wela as an experiment but as a result of a technical defect had already been abandoned before the war. It was not determined with certainty who first made the proposal for I.G. Farben to use it. According to the testimony of Dr. ter MEER,

Trans.G.p.13440, E.p.13152,

a Farben employee, Dr. HAGENBOECKER, probably took it upon himself to do so. At any rate, the intention at first was to lease the machinery (Proc.Exh.1153 and 1141). Originally it was to be sent to the Boruta,

Trans.G.p.6152, E.p.6096.

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The Trustee Office Gracow, which carried on the negotiation with I.G.Farben, now suggested, in contrast to the lease agreement originally intended, in which the ownership was not to be affected, a sales contract, for the amount of 44,000 Zloty - RM 22,000. I.G-Farben accepted this proposal, since the machinery would have rotted away completely at the closed - down Wsła plant, and finally, as the witness Schwab vividly describes, would have fallen prey to Binder the dealer in old machinery and scrap who had the monopoly in Warsaw, and who by virtue of an order dated 20 May 1942 had received the purchase right for unused machinery,

Trans. G.p. 6154, E.p. 6096.

The prosecution did not claim that the purchase price of 44,000 Zloty, which moreover had been determined by a Polish expert, was too low. It also did not claim that I.G. Farben did not pay the purchase price. Schwab, rather stated expressly that the price was paid and to the Trustee Office Gracow.

Trans. G.p. 6154, E.p. 6098.

Accordingly I.G. Farben did the only correct thing by purchasing the machinery at a suitable price, in order at any rate to save the former. When the price was paid and entered on the books according to regulations, the Reich authorities could indemnify the rightful owner, if they intended to do any such thing, a fact which could not be overlooked by the individual industrialist. If I.G. Farben had not purchased the plant - for the Trustee Office Gracow would not agree to a lease - the plant would have fallen into ruin. The machinery was saved from this by the purchase and could, as shown by Exh. 1628, NI-12394,

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Winnica was owned 50% by a French group, represented by Etablissements KUHLMANN, and 50% by I.G. Farben. The 50% of the stock which was I.G. Farben's share, was in the hands of the connected I.G. Chemie, Basel, and I.G. Farben, by virtue of an option agreement, had the right to take over this 50% at any time. I.G. Farben was, accordingly, 50% owner of the Winnica. In February of 1942, I.G. Farben made use of its right of option,

Trans.G.p.6162, E.p.6105.

The production program was jointly set up by I.G. Farben and the French group. The sale of Winnica products, with the exception of Khaki, which only the French representative sold, was likewise handled by the German and the French sales organizations on a 50-50 basis.

Even though to outsiders the Etablissements KUHLMANN appeared to be sole operator, I.G. Farben nevertheless constantly received all reports concerning production, sales financial matters; likewise the technical questions were discussed on an equality basis by I.G. Farben and the French operator. Moreover, I.G. Farben had made short and long-term operating credits available to the Winnica via the French Group, which were invested in repairing the plant and in the supplies by Winnica. Besides, the Winnica was affiliated with the Triple Cartel as a German-French possession,

cf. SCHNITZLER Doc.No.182,Exh.207,
Vol.X,p.49;

there the Winnica is listed as a member of the Triple Group.

Since the Soviet troops had marched into Poland on 17 September 1939,

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in accordance with the note of the Soviet Government to the foreign Governments accredited in Moscow,

SCHNITZLER Doc.No.117, Exh.120,
Vol.VII, p.77,

the trustees SCHNAB and SCROENER went first to the Winnica, on the basis of a directive of the Reich Ministry for the Economy dated 27 September 1939. Winnica was located near Warsaw, on the east bank of the Vistula. The factory was undamaged,

cf. SCHNITZLER Doc.No.8, Exh.8
Vol.VII, p.111,

A large quantity of supplies was on hand. The financial situation of the plant was good. The difficulties were mainly connected with procuring coal. Because of the lack of fuel, in 1940 the plant could be operated for only 8 months, with a production of 102,000 kg of dyestuffs; in 1941 the plant was in operation for 11 months, but, since only peat could be used in the heating, only 95,000 kg could be produced; in 1942 it was in operation for only 4½ months, and 39,000 kg were produced. The chances for selling in the Government General were very poor, since, as has already been described in the case of Wola, the textile center Bialystok and the leather center, Lomberg, had fallen to the Soviet Union and to export to Lodz, where, in the meantime the German prices, from 20 to 40% lower, had come into effect, had become impossible. In addition to this was the fact that a main product of Winnica, namely khaki for military cloth, could no longer be disposed of since the dissolution of the Polish army,

Trans.G.p.6159-61, L.p.6104-06.

In view of this development, I.G. Farben decided to take over the sole risk for the Winnica. In the course of the Franco-German negotiations, the transfer of the French share in the Winnica was discussed by I.G. Farben and the French group,

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cf. File memorandum about the German-French
discussions of 21/24 July 1941, Sec. 3,
Exh. 1163, NI-8394, Vol. 56, G.p. 67, E.p. 32.

By the purchase agreement of 18 November 1941, the French
group transferred its share in the stock to I.G. Farben,
for the payment of RM 1,000,000 = 20,000,000 French francs
and striking of the mutual demands from the title of
Winnico,

cf. testimony of SCHWAB on 30 January 1948,
Trans. G.p. 6161, 6162, E.p. 6106,
and Pres. Exh. 1163 and 1164.

From that time on, I.G. Farben was sole owner of Winnico.

The Winnico could operate only 4½ months in 1942, as
already described above. When in December 1942 the former
high Polish protective tariffs, among them those for
dyestuffs, were raised, the basis for the Winnico's
existence was finally withdrawn, and the President of the
court himself found at the examination of the witness
on 30 January 1948:

"It is in order to show that the plant made no profit,
that is sufficient."

Trans. G.p. 6163, E.p. 6107.

The Winnico subsequently had to be shut down. This happened,
therefore, at a time, when the Winnico had already been the
sole property of I.G. Farben for a long time. The machines
were brought to the Dornow for the expansion of this plant,
in order not to have to give them up to the old-iron dealer
in Warsaw. The lands and buildings were leased to a
pharmaceutical factory.

Trans. G.p. 6164, E.p. 6107.

The prosecution charges I.G. Farben and the men

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who participated in this transaction, with having been guilty of looting with respect to the French share of 50% in the Winnica. It neither claimed nor tried to prove that I.G. Farben exerted any pressure whatever on the French operators to give up their share in the stock. Under the circumstances just described, which were not disputed by the prosecution, it was extremely good business for the French operators, who had just as clear a picture of the conditions as the trustees or the directors of I.G. Farben, to be able to sell their share at all. The witness ter MEER, who himself took part in the negotiations with the French gentlemen, says:

"As I remember, they (the Frenchmen) were in complete agreement. The fact that the khaki business had been eliminated for Winnica produced an economic situation in that enterprise that looked anything but rosy. As far as I remember, the French were not at all dissatisfied with being able to get out of that risk."

Trans.G.p.13439, E.p.13151.

The further development proved the French operators who sold their block of stock to be completely justified; moreover, the prosecution neither claimed nor proved that the price of RM 1,000,000 paid by I.G. Farben was not suitable. Actually, the price which the French received was very good; for the entire capital stock amounted to 2,000,000 Zloty,

Exh.1136, NI-9164, Vol.55, G.p.83, and accordingly the 50% share of the French to 1,000,000 Zloty = RM 500,000. If the French received RM 1,000,000, they thus sold their shares at 200%.

A violation of Polish property or Polish public property also did not take place, since

as witness testimonies show the Winnica never was part of the Polish national property nor was it considered as falling under the Polish quota in the cartel negotiations, see Schnitzler Doc. No.182, Exh.207, Vol. X, P.49, and it was also explicitly confirmed by the German authorities upon the annulment of the confiscation on 11 June 1942 that the Winnica "neither now nor before the outbreak of war was a Polish enterprise" Schnitzler Doc.No. 222, Exh. 221, Vol. XIII, P. 20.

Ad 8:

25. The prosecution alleges that the acquisition of the antrachinon installation from the Dyestuff Factory Winnica was illegal.

The installation which had been erected in the Winnica Plant for the production of antrachinon had been built on the basis of an I.G. process. The I.G. had licensed the French firm Etablissements Kuhlmann to construct this installation. Etablissements Kuhlmann and I.G. Farben were under obligation to keep the process secret. The installation was relatively small, but was particularly suitable for conditions at the Winnica. Its monthly output was 5-6/tons. The machinery was mostly made up of 2 brick baking-furnaces, in other words brickwork. The value and the special features of the machinery were not the material from which it was built but the arrangement of its conductions were so very valuable; see Schwab testimonies of 30 January 1948, Tr.Germ.F.6165, Eng.F. 6109, and ter Meer on 3 May 1948, Tr. Germ.F.13137, Engl. F.13149

According to the information which the witness ter Meer had in his possession, the proposal to have the entrachinon installation removed emanated quite definitely from the two commissars:

"The I.G. Farben was not interested in the small machinery since it worked in its factory with much larger units."

Testimony ter Meer of 3 May 1948
Tr.Germ. F.13438, Eng.F.13150

The reason for the proposal to remove this installation was the vicinity of the Russian demarcation line and the fact that the commissars regarded the machinery as an important plant secret, that is, as the intellectual property of a German company and as the legitimate property of the German and French stockholders.

Originally, it was only contemplated to lease the plant to the I.G. It could not be thoroughly clarified in the proceedings how this proposal was presented to the I.G. Farben itself. Here again the Trustee Office Cracow in the end did not want to approve a lease but demanded that the I.G. Farben buy the plant. The I.G. Farben accepted the proposal. A Polish certified engineer appraised the machinery at 100,000 Zloty. The I.G. Farben paid the purchase price, and in 1941 the machinery was dismantled. The purchase price was paid to the Trustee Office Cracow and later on credited to the account of the clinic when the confiscation was revoked.

See Exh.1620, HL-8398, Vol.56, E.F. 39., G.F.63a
Tr.Germ.F.6166, Eng. F.6166, Eng.F.6116

It is impossible to see whose interests the prosecution regards as being violated in this case since:

1. the entrachinon installation represented intellectual property of the I.G. Farben

2. the I.G. Farben owned 50% of the innico and was permitted to negotiate such an acquisition which protected its own as well the French group's interests,
3. the purchase price paid by the I.G. Farben was incontestably adequate - the estimate was made by a Polish appraiser - and
4. since the purchase price did not remain at the Trustee Office, but was paid by that office to the innico, in other words to the former proprietor.

ad 9:

26. The prosecution charges the I.G. Farben with participating in a Germanization program in Poland and with violating hereby the rights of the Polish population in a criminal way. To prove this allegation it refers to

- a) Pros.exh.1147, AI-8385, Vol.55, G.F. 120, A.F.79, a Memo by the Chief of the Legal Division Dyestuffs of the I.G. Farben, Dr. Huepper, of 9 May 1941, which deals with the subject of calling the "Reich Commissioner for strengthening of Germanism" in for the purchase negotiations;
- b) Pros.exh.1148, AI-800, Vol.56, G.F.1, A.F. 1 a letter without date from the I.G. Archives, addressed to the "Reich Commissioner for strengthening of Germanism" in which assurance is offered that both in the technical as well as in the social and ethnological field the I.G. Farben would render exemplary work/
- c) a letter by the Dyestuffs Directorate of 16 January 1941

Pros.exh.1859, AI-1197,

introduced in the cross-examination of the witness Schwab on 30 January 1948 which discusses the obligations which the I.G. Farben assumed in addition to the purchase price and which concerned the development of the Perute in a technical and social direction.

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As far as including the Reich Commissar for Strengthening
of Germanism in the discussions is concerned the witness
Schwab

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stated in his cross-examination by Mr. Neuman on 30 January 1948 that while the Reich Commissar

"had interfered in the negotiations between the I.G.Farben and the Trustee Office in December 1940, giving as a reason that this matter was not commercial but that also ethnic interests in the East had to be taken into consideration ", Tr.Ferm.P.6181,Eng. P. 6125

(Underlined by defense counsel)

he testified that Herr von Schnitzler had neither prepared nor taken any steps "to carry out the general Nazi policy for Germanism". Nor had Herr v.Schnitzler prepared any steps which were intended to strengthen Germanism outside the old Reich frontiers,Tr. Germ. P.6182-83,Eng.P. 6125-26.

It is correct and was also proven by the witness Schwab that the I.G.Farben obligated itself in the purchase contract to disburse in addition to the purchase price 5,2 Million RM for the development of the Boruta, that is for an improvement of the plant both in technical as well as social respect.

Re-direct examination r. Max Winkler on
10 May 1948 Tr.Germ.P.14351,Eng.P.14180-81.
See also Affid. Dr. Metzdorf for Meer Doc.
No. 70,Exh.245, Vol. III,P.5.

The witness Schwab in this connection refers to official Polish statistics according to which 98% of all dwellings in Poland had only one room and he points out that the I.G. was obliged to create better conditions for the workers of the Boruta in keeping with its own traditions, whereby it must be taken into consideration that this concerned the former workers of the firm, in other words more or less

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Polish citizens . No differentiation in social Welfare matters had been made between ethnic Germans and Poles. The so-called community institutions such as community house, savings fund, sick benefits, medical care by a special plant physician and the plant kitchen were equally open to German as well as Polish workers.

Tr.Germ.P.6170,6171,6178,6182-83
Engl. P.6114,6115,6122,6127-28.

As the case in chief shows, the I.G.Farben not only did not carry out a Germanization policy but, against the directives issued by the Reich tried to accord them a better status than was permissible. It succeeded in obtaining a better pay scale for the Boruta resulting in a 20% wage hike for the workers. When the "pay-cut for Poles" was introduced, the I.G. took advantage of the possibility to pay bonuses to such an extent that in practice there was not one single case where a Polish workers ceased to receive his old pay;

Tr.Germ. P.6170,Eng.P.6113,see testimony
by the witness Dr. Kuepper in the defense
cross -examination of 28 October 1947,
Tr.Germ.P.2941,Eng.P.2920.

Although it was forbidden, the I.G. also paid sick benefits up to three months to Poles. It was even exclusively due to I.G. Farben intervention that the Polish workers could stay at their jobs with the Boruta, and that they were not deported to the Government General as had been planned by the Reich authorities; see testimony

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Dr. Kuepper Tr.Germ.P.2940,2951,Eng.P.2920,2931.

In the Winnica the I.G-Farben even bought potatoes for its workers in the black market at about 25 times the normal price and procured 1/2 liter of milk for each worker daily, so that the total disbursements of the Winnica for social welfare purposes in the 2nd half of the year 1940 exceeded the total disbursements for wages and salaries.

Tr.Germ.P.6171,Eng.6115.

One cannot understand how the prosecution can speak of a Germanization policy in view of such an attitude on the part of the I.G.Farben toward its Polish workers, an attitude which according to the laws of the Third Reich was even punishable.

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Blizyn and Sarzyn

27. In connection with the question of Poland, the Prosecution introduced an invoice about machinery bought on 12 December 1940 from the Blizyn Plant which is located in Poland.

Exh. 1168, NI-6064, Vol. 56, Germ. P. 129, E.P. 89.

There is no connection between this document and the defendant. Nothing was known to the witness Schwab about this affair.

Tr. Germ. P. 6167, Eng. 6111

With regard to the Sarzyna Plant, - munitions factory which was being built up for the Polish Ministry of War,

Exh. 1133, NI-5947, Vol. 55, Germ. P. 46, Eng. P. 32

" 1134, NI-1149, Vol. 55, G.P. 54, " 34

" 1150, NI- 6831, Vol. 56, " 4 " 4

the prosecution did not prove any connection with the I.G. Farben. nor, in particular, any acquisition of Sarzyna machinery or the execution of dismantling; see Testimony Schwab of 30 January 1948, Tr. Germ. P. 6167-68, E.P. 6111-12. The prosecution did not even show in how far an infraction of international law is supposed to have been committed.

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Dyestuffs-Factory Muehlhouse in Alsace .

28. Preliminary Remark:

As far as the legal aspects are concerned, I would like to refer to my Final Plea Section 32, P.57/60.

In accordance with the Law of 23 June 1940, the French property in Alsace was confiscated by the German Reich

Pros.Exh.1213, Vol. 61,P.1,

and was taken over as property by the German Reich by Decree of 13 July 1940 concerning the Transfer of Property.

Pros.Exh.1214, Vol.61, Germ.P.4. Eng.P.5.

and Addendum to Pros. Exh. 1218, Vol.61, P.45, G.P.23

Thus, there existed a fait accompli at the time the lease contract was concluded on 8 May 1941

Pros.Exh.1218, Vol. 61, G.P.15, E.P.15

and at the time the purchase contract was negotiated on 14 July 1943,

Pros.Exh.1218, Vol.61, G.P.30, E.P.23.

Therefore the I.G. Farben did not have the chance to conclude contracts with the French proprietors, since at this time they actually no longer had the right to effect transactions, regardless of the fact whether the government act was permissible or not. If there existed a violation of international law on the part of the German government, this was already a fact in the past when the I.G. Farben entered into the picture and therefore it did not participate therein.

It must moreover be taken into consideration that in effect the French properties and the French management could no longer operate the plant, so that in the interest of the economy of the occupied territory and securing the continuous flow of supplies for the population it became necessary to operate the plant some way or other in a proper manner in accordance with Art. 43 of the Hague Rules for Land Warfare.

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Subjectively, it should be noted that the Decree of 23 June 1940, Pros.Exh. 1213, Vol.61, P.1, provides as follows:

"In order to guarantee continuous supplies for the population in the occupied territories, it is necessary to maintain the entire economy as far as possible.....In this connection it is imperative that the orderly management and administration of enterprises and plants be assured."

In Article 5 of the Lease Contract the I.G.Farben obligated itself, Pros.Exh. 1217, Vol.61,P.22, to employ the employees and workers of the former plant, and assumed obligations for substantial investments in the interest of an orderly management of the plant. As a consequence, the factory in Muhlhouse was able to work through out the war. Exam. Dr. Ambros of 28 Feb. 1948, Trans.Germ.P.8109, Eng.P.8034, Exam.Dr.ter Meer of 30 April 1948, Tr.Germ.P.13379, Eng.P. 13583.

The subsequent Sales Contract was concluded in the interest of the French owners with whom the I.G.Farben had maintained friendly relations through former cartell agreements and the Francolor Contract, and after ter Meer and Schnitzler had discussed the matter with the French owners. In the interest of continued existence of the plant as well as for the benefit of the workers and employees, the Frenchman preferred the I.G. to buy the plant from the German Reich, since they obviously relied rather on their friends in the I.G.Farben than on the National Socialist government, especially since they were able to agree with Schnitzler and ter Meer on coming to an agreement with the I.G.Farben about this matter after the war. Testimony Dr.ter Meer Tr.Germ.P.13378/9, Eng.P.13582/3.

Similarly the prosecution witness Dr. Mayer-Wengelin had to admit under my cross-examination on 30 October 1947 with regard to the oxygen plants in Alsace - a case which is almost identical that the I.G.Farben desired "only an intermediate solution,

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a temporary solution". Tr.Germ.P.3138,Eng.P.3116.

With regard to the oxygen plants in Alsace we would like to point out that these did not belong to Schnitzler's actual field of activity, since he worked only in the dyestuffs field. The negotiations were conducted by the competent member of the Vorstand, Weber-Andrae, who has died in the meantime. After the death of Weber -Andrae, that is not until the beginning of 1944 in other words at a time when all decisive negotiations had already been concluded, Schnitzler became chairman of the Chemical Committee.

Schnitzler was unable to familiarize himself with the workings of the Chemical Committee until the end of the war, since it was impossible for him to get acquainted with this extremely comprehensive field within one year; see Testimony v.Heider of 3 October 1947. Trans.G.P.1622/24,E.P.1637/39.

Accordingly, Schnitzler concluded neither the Lease Contract, Pros.Exh.1227, Vol.62,P.4, nor the Sales Contract,Pros.Exh.1235, Vol.62,G.P.29.E.P.24, nor did he sign them or is mentioned in the other prosecution documents .

Chemie - Ost GmbH.

For the sake of completeness, the following should be said with regard to Russia and the Chemie-Ost GmbH. in particular:

1. The "National Socialist Spoliation Plan" which the prosecution mentions, Trial Brief II, P.16, was by no means generally known in Germany as the prosecution claims.

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All that was known were the officially published orders, for instance the Decree concerning the Administration of the Newly Occupied Eastern Territories and the Decree concerning the Property requisitioned for use of the National Economy in the Occupied Territories"

Schn.Exh. 2,107/110, Vol.VI,P.94/114.

These, however, as I stated already in my Final Plea, are in conformity with Article 43 of the Hague Rules for Land Warfare.

However, the documents which the prosecution introduced in book 63, such as the Directives concerning the administration of the Economy in the Newly Occupied Eastern Territories, Pros.Exh. 1170, Vol. 63, P.5,

or Goerings' Secret Communication. Pros.Exh. 1171, Vol.63,P.6, neither of which lists the I.G.Farben or Schnitzler in their distribution key, were not known.

2. The Chemie-Ost GmbH itself was actually not authorized "to engage in transactional business", see Pros.Exh.1561, Vol.64, P.14.

3. Contrary to the allegation in Section 116 of the indictment, Schnitzler was not a member of the Beirat. In any case, membership would have been quite immaterial since the company is not charged with any criminal acts.

4. The Chemie-Ost was intended as a mere consulting company; it rendered this consulting service only in very few instances of an entirely secondary nature; it did not even act as a trustee company nor even solicit such a commission, Affid. Willibald Passarge, Igner Doc.Bk. IX, P.22, Doc. 163.

5. According to Dr. Schlotterer, the Chemie-Ost was only meant to act as custodian, i.e. only as a trustee, and it was not authorized "to take over on its own behalf property or property rights". Moreover, it was scheduled to export to the East, in other words to supply machines and raw materials.

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Exam. Schlotterer of 27 January 1948
Tr.Germ.P.5919/20,Eng.P.5874,

That however, is diametrically opposed to spoliation.

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Count III of the Indictment.

30. In Count III of the Indictment, the prosecution charges the defendant von Schnitzler with participation in the crimes of enslavement and mass murder. It alleges that von Schnitzler.
1. Was in some measure actively involved in the so-called "Slave Labor Program", or partly knew about it;
 2. knew about the gassing of human beings in Auschwitz,
 3. knew about the criminal medical experiments in the Buchenwald and Auschwitz concentration camps and
 4. was informed of the facts which are connected with alleged crimes committed in Auschwitz.

As far as the allegations are concerned which the prosecution has made in these technical fields, they have been clarified by the cases in chief of those defense counsel: (Dr. Hellmuth Dix, Dr. Seidl, Dr. Hoffmann, Dr. Berndt, Dr. Selte, Dr. Tribilla) who have dealt with the questions pertaining to labor allocation, the Degesch affair, the medical experiments, and with the subject of Auschwitz. With regard to this basic issue, reference is made to the case in chief and the argumentation by these defense counsels. Accordingly, the following remarks are only concerned with those counts in which the prosecution charges the defendant von Schnitzler personally with alleged crimes.

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Ad 1):

The prosecution charges that Schnitzler in some measure actively participated in the so-called "Slave Labor Program" and for that had some knowledge of it.

a) In Doc. Bk.68 the prosecution introduces a letter by the defendant v. Schnitzler dated 27 February 1941, and addressed to the Reich Ministry for the Economy which deals with the removal of dyestuffs to France, Exh.1325,NI-674, Vol. 68, Germ.P.66, Eng.P.63, at the same time refers to a paragraph in the letter according to which "41 Prisoners of War and other foreigners" were employed in the dyestuffs production of the I.G.Farben. Obviously, the prosecution sees in the employment of prisoners of war and foreigners in dyestuffs production a war crime or a crime against humanity.

The prosecution did not attempt to show a direct connection between the production of dyestuffs and war operations. No further explanation is needed to show that dyestuffs do not come under the heading of "arms and ammunition". Apart from agriculture, there is hardly any other activity for more peaceful purposes than the production of dyestuffs. Therefore, the document in question lacks every value as evidence.

b) In the same document book 68 the prosecution presents correspondence between one Reinhold Kreuse, Director Dr. Bertrams of the Ammoniakwerk Merseburg of the I.G.Farben and the defendant von Schnitzler,

Exh. 1326,NI-681,Vol.68,Germ.P.77,E.P.70,
Trial Brief of the prosecution,Part III,P.18.

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This correspondence starts with a letter by Herr Krause of 1 March 1943 in which he advises the defendant v. Schnitzler that the General Referent in the Reich Ministry for the Economy, President Mehrl, had asked him to answer certain questions pertaining to labor allocation and labor assignment and possibly to make proposals for an improvement in the utilization of manpower and an increase in output. By his letter of 3 March 1943, the defendant Dr. v. Schnitzler transmitted the aforementioned letter, which obviously was addressed to a greater number of persons, to Director Bertrams of the Ammoniakwerk Merseburg asking him to answer Herr Krause directly. Herr v. Schnitzler mentions at the same time that the Frankfurt/Main Grueneberg branch, which was merely an office building, could not make any contributions in this respect. By his letter of 10 March 1943, Bertrams sent a reply directly to Krause. Bertrams mentions therein that an increase in the production of the chemical industry in Germany could be brought about only if manpower from the chemical industry of foreign countries would be made available "inasmuch as they can be spared".

He further states that for this purpose it would be necessary "to comb out" the chemical industries of France and Belgium and assign the workers, thus made available, to work in the chemical industry. Together with a letter of the same date, Director Bertrams sends a copy of his above mentioned reply to the defendant v. Schnitzler. There is no comment of von Schnitzler's with regard to this Bertram letter on hand. Schnitzler only took cognizance of the Bertram letter to Krause without seeing it before it was dispatched.

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The following should be said in this connection :

- aa) The prosecution has not proved that the defendant von Schnitzler approved of the contents of the letter;
- bb) it has not proved that Bertrams' proposal purported a compulsory deportations of French and Belgian workers to Germany;
- cc) it has not proved that Bertrams' proposal could be at all interpreted as criminal;
- dd) it has not even claimed that the proposals became actually a definite program or that they were carried out.

The proposals cannot be regarded as a criminal act and certainly not be claimed that by having knowledge of the letter of 10 March 1943, which did not even concern Herr von Schnitzler's activity, the latter became guilty of a crime.

c) Furthermore, the prosecution introduces 3 documents which have no direct connection with one another and which concern the employment of French chemical workers in Germany,

Exh.1327,NI-1048,Vol.68,G.P.86

and a letter by the Plenipotentiary for the Four-Year-Plan, Plenipotentiary General for Special Questions concerning Chemical Production, dated 21 August 1942 and addressed to Herr von Schnitzler, as well as Schnitzler's answer to this letter, both of which deal with the group allocation of French chemical workers,Exh.1337,NI-9369,Vol.69,G.P.40,E.P.30

The first document in Exh. 1327 is a note by the Manager of the SOPI, Paris, Dr. Kraemer, addressed to the I.G.Farben Directorate on 30 June 1942, which the defendant Schnitzler confirmed as having read as can be seen from his initials. This note concerns the

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recruiting of French workers for Germany who were to be allocated to the chemical industry, and in this respect the ultimate goal was to recruit 100 workers. The note shows that this recruiting drive was conducted conjointly with the Frenchmen M. Josef and M. Louis FROSSARD and with the French Production Ministry. M. ROUGIER, the director of the Chemical Division in the French Production Ministry, suggested on that occasion that it would be more expedient to assign whole groups of workers from one and the same concern to a "German firm that was on friendly terms with the French one" (paragraph 2 of the note). M. FROSSARD augmented this suggestion by proposing that the Franco-German workers groups should be assigned in bulk to Ludwigshafen, if possible (paragraph 4 of the note). At no time was any reference made to compulsory recruitings; rather, it was expressly mentioned that this drive should be a voluntary one (paragraph 3 of the note).

The second document in prosecution exhibit 1327 is a letter of 12 November 1942, sent by the I.G. Farben to Director Dr. SCHNEIDER; however, there is no specific sender mentioned. This letter, too, dealt with the problem of employing French workers who originally worked for the Franco-German, and who were to work for the I.G. plants at Ludwigshafen and Oppau. This letter does not contain any mention at all which could be construed to the effect that these workers should be assigned as compulsory labor; on the contrary, special mention is made in this letter that Director Dr. AMERON "made specific arrangements to care for these French chemical workers and employees". The third document in prosecution exhibit 1327 is a letter from the defendant SCHNEIDER addressed to the defendant v. SCHNITZLER.

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dated 6 November 1942. In this letter the possibility is examined whether French workers could be recruited for the I.G.; and in particular at those French plants "in which the I.G. had shares or with which it has any other mutual spheres of interest" (paragraph 1 of the letter). It is just this train of thought which shows that the planned recruiting was not to be a compulsory action but that voluntary recruits from firms, which were on friendly terms with the I.G., were wanted with the aim of employing these French workers, after they had come to Germany, within the I.G. Farben; by this, one wanted to establish groups of comrades for whose care better collective arrangements were possible than those that could have been afforded them at other places of work or concerns that were not members of the I.G. Farben. The proposal in question, which had been addressed to Herr. von SCHNITZLER, was meant to name those French firms in which the I.G. was interested, as well as to select such I.G. plants which could take French workers; thus, the workers recruited in France would have had a chance to continue their work in congenial surroundings. The main idea expressed in the letter concerned ran along analogous lines as the one contained in the Dr. KRAMER note of 30 June 1942; consequently, it aimed at strengthening and furthering the volunteer principle as well as at preventing the rather impersonal nature of labor allocation as embodied in the so-called SAUCKEL-Operation.

The above-mentioned letter of the Plenipotentiary for the Four-Year Plan, dated 21 August 1942 (prosecution Exh.1337; Book 69, G.F.40, B.F.30), explains SCHNEIDER's letter of 26 November 1942. In this letter (paragraph 1), reference is made to a collective employment agreement

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which had been concluded between the I.G. Ludwigshafen plant and the Francolor, and which was the basis for the Francolor sending 100 workers in one group to work assignments at Ludwigshafen. Paragraph 2 of this letter states that in such a case the French workers were to remain in the employ of their original French firm for the duration of the contract. The letter expressly emphasises that by including this clause, the French firm was favored insofar as the workers, who had been available, would be returned to it in bulk after the limited assignment had come to an end. Furthermore, the letter stresses that it was just M. FROSTARD "who supported, with his usual energy, the signing of the first group assignment agreement with the I.G. Farbenindustrie A.G., Ludwigshafen."

Neither in the letter of the Plenipotentiary for the Four Year Plan nor in Herr v. SCHNITZLER's reply was any mention made that the recruitings concerned were meant for forced labor allocation. Rather, the entire correspondence proves that the I.G. endeavored to settle matters as favorably as possible, based on the above-mentioned agreement, for the French workers who were to be assigned to it and their respective original French firms.

d) Apart from those special documents, the prosecution refers to SCHNITZLER's participation in the conferences of the Advisory Council of the Employers' Association. Affidavit SCHNEIDER Exh. 1329, NI-6849, Book 48, G.P. 109, P. 90, trial brief of the prosecution part III, P. 20.

As for the conferences of the Advisory Council of the Employers' Association and the plant managers conferences dealt with in the same affidavit, other defense counsels will comment in detail and exhaustively on those two problems. According to the attendance list, contained in the document, SCHNITZLER did not participate in the conference of the Advisory Council of the Employers' Association on 11 March 1941, which took place in Schkopau; Exh. 1350, NI-7107 bk. 69, G.P. 103, G.P. 78, trial brief of the prosecution part III, P. 21.

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The index for book 69, prosecution exh.1350, has been corrected by the prosecution representative himself, trans.g.p.3309, e.p.3284.

e) Finally, in book 70 the prosecution submits a number of minutes concerning the "conferences in Leverkusen held by the technical-engineering division heads", and others that deal with the "Leverkusen Directorate Conferences" from 1941 through 1944, Exh.1370, NI-6125, bk.70, e.p.1, e.p.1, exh.1371, NI-5765, bl,70, e.p.34, e.p.21; Trial brief of the prosecution part III p.26.

As to the contents of these documents, this matter is largely clarified by the defense counsel for the defendant Dr. KUEHNE in his defense, so that it becomes superfluous to deal with this problem in the SCHNITZLER defense. Irrespective of this however, Dr.v. SCHNITZLER's defense counsel cannot omit, because of principal considerations to comment on this prosecution thesis according to which v. SCHNITZLER allegedly knew of those minutes and their contents and that he had approved of them, and that, therefore, he was fully accountable for them. On several occasions, the defense has proved that SCHNITZLER's activities were confined to the dye-stuff field, that in this connection he was solely concerned with business and transactional problems, and that he had nothing to do whatsoever with the technical and engineering work. It certainly must be called a daring construction of the prosecution if it deduces a definite responsibility from the fact of a person initialling documents that dealt with a field with which he had nothing to do at all; this applies in particular if the document concerned, as for instance in the case of the Leverkusen documents, is by no means the originals but merely one of the many copies which were made of those minutes.

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Dr. KUEHNE's testimony of 25 March 1948 shows why a copy of those minutes was at all forwarded to Herr v. SCHNITZLER; trans. G.P. 10233-34, 4p. 10094-95. According to this, Geheimrat DUISBERG wanted that both the plant combines and the sales combines exchanged information about their respective directorate conferences by forwarding the minutes through distribution channels. In practice however, this ruling was by no means strictly adhered to; on the other hand, the Leverkusen plant sent its directorate conference minutes also to Herr v. SCHNITZLER, among others, in order to get his minutes in exchange. However, Dr. KUEHNE cannot recall one single case when this was done. The forwarding of such minutes was purely for informational purposes. Each plant manager was to be responsible for his particular plant. Considering the regular business and office routine, Herr v. SCHNITZLER's initialling of any such minutes meant nothing but a confirmation on the part of the initialling person to the effect that he did not have any intentions to deal with the matter at hand any further; however, this act of initialling did not mean that he had read the entire document, and certainly not that he had assumed any responsibility for the contents of any such document,

ad 2:

The prosecution alleges that SCHNITZLER was cognizant of the fact that human beings were gassed in Auschwitz, and that he had virtually approved of these events by omitting to stop their continuance. In this respect, the prosecution refers to one of v. SCHNITZLER's interrogations

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on 17 July 1945 which is contained in his affidavit of 27 March 1947, Exh. 18, NI-5197, bk. 16, g.p. 134, e.p. 117; Trial Brief of the prosecution part III, p. 52.

The very same matter is dealt with in a v. SCHNITZLER declaration of 8 May 1945, contained in his affidavit of 18 March 1947; exh. 40, NI-5196, bk. 16, g.p. 109, e.p. 92;

and finally, in his interrogation of 2 May 1947, exh. 1813 NI-12547, bk. 16, g.p. 200, e.p. 1b.

In this connection, however, the prosecution has made three mistakes:

1. The whole wording of the mentioned SCHNITZLER statements, even if one were to believe them - that they are untrue will be proved later on - is of such a nature that not even a trace of approval can be found therein. SCHNITZLER describes expressly how appalled he had been about the rumor, and how much he was oppressed by it: "I kept it for myself because it was too horrible."

Exh. 18, NI-5197, bk. 16, g.p. 171, e.p. 154.

2. The assertion that an I.G. director, or for that matter any other person in Germany, could have undertaken anything against those pernicious mass crimes as they had been decreed by the Third Reich can only be made by such persons who have never experienced a real dictatorship, especially if it was a dictatorship of the Third Reich variety. Not the attempt to stop these gassings, nay, already the passing on of rumors would, as the trial case in chief

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has shown, have resulted in all probability that such a person would have been killed; see cross-examination DIELS on 26 November 1947, trans.g.p.4455-55, e.p.4436-37, as well as the examination of MUENCH on 11 May 1948, trans.g.p.14666, 14667, and 14673, e.p.14328, 14329 and 14336.

3. During his various interrogations SCHNITZLER stated that he had heard the rumor concerning the gassings during the last quarter of 1944. Supposing that he had sacrificed his person by passing on this rumor and by attempting to bring about an end to these gassings, this would not have changed anything nor undone the harm as far as the actual happenings were concerned. At that time the gassings had already been discontinued. This can be seen both from the affidavit of the prosecution witness Perry BROAD, Exh. 1762, NI-11954, bk.82, c/p.50, e.p.50, and from the testimony of the witness Felix RAUSCH on 13 and 14 November 1947 (trans.g.p.3799 and 3800, e.p.3757 and 3773), and particularly from the testimony of the witness MUENCH on 11 May 1948 (trans.g.p.14669, e.p.14330).

MUENCH mentions the middle of October as the time when the gassings were stopped. The rumors which might have come to the attention of SCHNITZLER must have originated after the gassings were terminated; consequently, SCHNITZLER could not even have intervened at all; his personal sacrifice would have been in vain.

Apart from these errors of the prosecution, SCHNITZLER's statement - regardless of the fact that

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the defense considers SCHNITZLER's affidavit inadmissible or rather useless for procedural reasons as it was made under duress - is bound to be erroneous pertinently. In his statements SCHNITZLER mentioned that I.G. Director MUELLER-CUNRADI, who died in 1945, informed him of two events stating that they were rumors, namely that

- a) human beings were gassed in Auschwitz,
- b) that I.G. gas was used for this purpose.

The following will show that in actual fact these statements are wrong:

1. Ad b) is objectively wrong. During the trial the defense has shown that I.G. gas was not used. There is no compelling reason to assume that MUELLER-CUNRADI should have passed on false information. Rather, it is far more probable that SCHNITZLER, due to the psychosis prevailing during the collapse and to the treatment he received in Preungesheim - see KLEFLIGER testimony of 11 May 1948 (trans.g.p.14631-645, e.p.14293-307) - backdated events in his mind of which he did not learn until the very last stages of the war through listening in to foreign broadcasts, which was prohibited, or after the war, through information imparted to him by Allied personnel, and that he inadvertently put them at an earlier date, namely 1944.
2. MUELLER-CUNRADI could not possibly have had any knowledge of the events in Auschwitz; he had nothing to do with that plant at all. Ever since 1920, MUELLER-CUNRADI had been employed by the I.G. and from 1939 on was director of the Oppau plant, as can be seen from the GOLDBERG affidavit, SCHNITZLER document No. 210, Exh.196, bk.XI p.58, and from the affidavit of Liselotte MUELLER-CUNRADI, the daughter of the deceased, SCHNITZLER Doc.No.176, exh.179, bk.IX p.79.

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He was "neither concerned with planning nor with the actual construction work, nor was he in any way connected with the management of the Auschwitz plant in an official capacity." SCHNITZLER Exh.196.

Apart from his tasks in Opau, his only other assignment was supervising the construction of the Heydebreck plant. Therefore, it must be called highly improbable that he learned anything about events which were the essence of top secrets as far as the SS was concerned, especially as the spreading of any such information would have meant certain death.

3. The fact that MUELLER-CUNRADI at no time communicated such information even to such I.G. employees with whom he had most of his official dealings, i.e. the efficient GOLDBERG, is another reason that SCHNITZLER's statement can be termed improbable. GOLDBERG was in charge of the office of Sparte I (Nitrogen), and "for many years he had almost daily discussions" with MUELLER-CUNRADI; however, he stated under oath that he sometimes talked to MUELLER-CUNRADI about Auschwitz; "but at no time did Herr MUELLER-CUNRADI mention to me anything concerning gassings at Auschwitz, or the use of I.G. manufactured gasses in Auschwitz for the gassings. Considering that Dr. MUELLER-CUNRADI was a very talkative man and because of the close relationship between us two, it would have been only natural for Dr. MUELLER-CUNRADI to say something to me about these events." SCHNITZLER Exh.196. The deceased's daughter confirmed this; she added that her father even stressed the fact that the I.G. had left no stone unturned to mitigate, as far as possible, the prisoners' lot if and when they worked in the Auschwitz I.G. plant.

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4. Further proof that SCHNITZLER's statements concerning the gassings are wrong are the contradictions contained in his own testimony. In his statement of 8 August 1945, exh. 40, NI-5196, bk. 16, g.p. 115, e.p. 98, SCHNITZLER's says that he had discussed the matter with one of his co-defendants, but that he could not recall this incidence; however, in the preceding interrogation on 17 July 1945, exh. 18, NI-5197, bk. 16, g.p. 170-172, e.p. 153-155, he replied to the question: "didn't you ask your employees...? with: "they affirmed that they knew.....":

but answering a further question: "Did you take any steps at all?" he continued: "I kept it to myself."

All these answers constitute a chain of contradictions. To this must be added that it would have been completely senseless if SCHNITZLER had asked "any of his employees"; SCHNITZLER's employees were clerks from the dyestuff field, and it is impossible to assume, if one compares the prosecution and defense cases in chief, that at the end of 1944 a query with the Frankfurt I.G. employees would have sufficed for obtaining information concerning the most jealously guarded SS secrets about Auschwitz.

5. That SCHNITZLER recognized that his 1945 statement were quite erroneous when submitting his 1947 affidavits can be seen from the fact that he added a correction to his statement of 8 August 1945 in prosecution exh.

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(bk.16 g.p. 122, o.p.105, section e), and that, amongst others, the word "indication" has been replaced by the words "reference was made to a rumor", and also from the fact that in prosecution exh.1813 he added a further restriction concerning MUELLER-CUNRADI's reaction. The fact that in 1947 SCHNITZLER did not abrogate all his false and illogical statements made in 1945 can be ascribed to the state of duress in which he found himself when he made his 1945 statements - a condition which continued to prevail - as well as to the pressure which weighed him down during the 1947 interrogations, i.e. in particular in view of Mr. SPRECHER's threat that he would be tried for perjury, and also because of Mr. SPRECHER's statement:

"There are some perjury sentences that might be stiffer than those handed down for participating in the German re-militarization program."

SCHNITZLER doc.26, exh.28, bk.II, p.13.

ad 3:

The prosecution has alleged that SCHNITZLER as I.G. Vorstand member had knowledge of criminal medical experiments in the various concentration camps; trial brief of the prosecution part III, p.85-86.

The charge of collective criminal responsibility of the I.G. Forben Vorstand will be dealt with as part of the over-all defense plan. Let it suffice here to affirm that the prosecution has failed to substantiate this charge with any evidence, and that SCHNITZLER could not even be remotely linked to the alleged medical experiments.

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Ad 4:

The prosecution contends that Schnitzler was informed of all the events which were connected with the alleged crimes covered by the entire subject of Auschwitz. It supports its statement on the fact that Schnitzler was authorized to take part in the conferences of the Technical Committee as a guest and participated in such conferences on various occasions; see affidavit Struss,

Exh. 1318, IT-4999, Vol. 68, Germ. p. 20, Eng. p. 22

Trial Brief of the Pros. part. III, p. 12.

From this it makes the daring conclusion that Schnitzler was not only responsible for the decision to build Auschwitz but that he knew everything which, in the opinion of the prosecution, had to do with the construction and operation of the plant.

The charges which the prosecution raises with respect to the creating of Auschwitz, the construction and operation of the plant are refuted by the defense counsels who are principally handling this subject. As far as the defendant von Schnitzler is concerned, attention must here be called to the fact that the deduction of the prosecution with respect to his person in no way is conclusive. As shown by another affidavit of Struss,

Schnitzler Doc. No. 43, Exh. 47, Vol. II, p. 86, Schnitzler, it is true, was entitled, to participate in the conferences of the Technical Committee, but he left these conferences "usually following the scientific and technical reports which were first on the agenda."

He did not participate at all in the conferences of 19 March 1941 and 24 April 1941, during which the Auschwitz project was discussed in the Technical Committee for the first time

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according to the attendance lists attached to both transcripts of the minutes. The attendance lists of the other Technical Committee minutes submitted in connection with Auschwitz show that Schnitzler could have had no insight into the whole subject of Auschwitz since when this subject was discussed, as the attached summary shows, he was never present. Also it can be assumed, in so far as he is listed as "a guest" or "present for a limited time" without any qualification as to the particular part of the agenda, that as was his custom he was present only during the scientific reports which preceded the conference. Therefore, it is erroneous to contend that Schnitzler himself was informed about the internal affairs within I. G. with respect to Auschwitz or even regarding the conditions in Auschwitz.

The attempt of the prosecution to accuse Herr v. Schnitzler of participation in crimes against humanity strikes such an alien note, because Schnitzler's very character, in view of the case-in-chief, is shown to be beyond all reproach from the standpoint of human behavior. Every witness who commented on Schnitzler's character described his human warmth, his willingness to help and his attitude on social welfare matters;

Testimony Kuepper, 28 Jan. 1948, Trans. Germa. p. 6043/45, 47, Eng. p. 5998-5993;

" Overhoff, 26 Jan. 1948, Trans. Germa. p. 5845-46, Eng. p. 5801-02;

" Schwab 29 Jan 1948, Trans. Germa. p. 6143-44, Eng. p. 6086-87;

This is also confirmed by the affidavits submitted in his behalf. How his colleagues judge him and intervene

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on his behalf is shown by the joint affidavit of 29 former subordinates,

Schnitzler, Doc. No. 218, Exh. 202, Vol. XI, p. 76.

This is also reiterated by the affidavit of the director of the personnel department of the I. G. Farben in Frankfurt, whose superior was Schnitzler,

Schnitzler, Doc. No. 211, Exh. 197, Vol. XI, p. 61.

Bormann describes how Schnitzler, without respect to the individual, sympathized in the cares and worries of the plant employees to whom fate had not been kind, and arranged that financial and other aid be granted to them. Schnitzler maintained the same attitude towards the voluntary foreign workers who were employed in the Frankfurt administration buildings who were "treated exemplarily" in the matter of feeding as well as accommodation; in violation of the restrictive regulation of the Party some of them were even accommodated in private quarters and all of them were permitted, in violation of Party instructions, to use the same air raid shelters as the German employees. (see Affidavit Bormann, Schnitzler Exh. 197). The senior gardner of the Frankfurt administration building describes how Schnitzler took care of the foreign workers, Affidavit Mohr,

Schnitzler Doc. No. 217, Exh. 201, Vol. XI. P. 73.

Mohr describes how Schnitzler made it his (Mohr's) "special duty" to see that the foreign workers were well taken care of and to "treat them just like German workers."

And to show that these were not mere words, Mohr states: "All of the foreign workers who were granted leave in order to visit their relatives in their home country returned to Frankfurt."

It is beyond any explanation how one can attempt

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to connect a man who felt so obligated towards his
fellow-men as did Schnitzler and who did everything for them he
possibly could with crimes against humanity.

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Appendix to Closing Brief (To Indictment Count Pg. 146 of Closing Brief
 Brief Schnitzler III - Auschwitz)

Participation of Schnitzler in Technical Committee
 Conferences

Date of Conference	Doc. No.	Exh. No.	Doc. Vol.	Germ. Pge	Eng. Page
1) 19. 3. 1941	NI-11827	1425	72	143	88
2) 24. 4. 1941	NI-11826	1432	73	25	13
3) 6.11. 1941	NI-10936	1436	73	75	35
4) 8. 1. 1942	NI-10937	1438	73	110	57
5) 17. 2. 1942	NI-10938	1439	73	127	68
6) 9. 4. 1942	NI-10939	1441	73	166	92
7) 28. 5. 1942	NI-10940	1442	73	174	95
8) 9. 7. 1942	NI-10941	1456	74	150	86
9) 10. 9. 1942	NU-10942	1491	75	235	203
10) 28.10. 1942	NI-10943	1498	77	6	3
11) 16.12. 1942	NI-10944	1499	77	17	5
12) 17. 2. 1943	NI-10945	1502	77	38	21
13) 15. 4. 1943	NI-10946	1504	77	74	39
14) 30. 6. 1943	NI-10947	1506	77	104	50
15) 1. 9. 1943	NI-10948	1508	77	115	58
16) 3.11. 1943	NI-10949	1510	77	139	72

Presence of Schnitzler at the conference according to
 attendance list

- 1) not present
- 2) not present
- 3) present "for only a limited time"
- 4) present "for only a limited time"
- 5) not present

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- 6) present for "point I and II", not present when Auschwitz was discussed.
- 7) present "as guest"
- 8) present "as guest re point I", not present during discussion of the subject of Auschwitz.
- 9) present "re point I-II", not present during discussion of the subject of Auschwitz.
- 10) present "re point I", not present during discussion of the subject of Auschwitz
- 11) (Contrary to contention of the prosecution in Trial Brief,

Part. III, P. 105,)

- 12) present "re point I", not present during discussion of the subject of Auschwitz.
- 13) "not present"
- 13) present "as guest"
- 14) present "as guest"
- 15) present "as guest"
- 16) present "re point I, not present during discussion of the subject of Auschwitz.

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With respect to the person and the industrial position of Schnitzler may I refer to my final plea, Section 39, pages 76/83.

31 Schnitzler held industrial positions with the Reich

Group Industry, Economic Group Chemical Industry and in the I. G. Farben. The prosecution also based the indictment upon Article 2, Section 2e of the Control Council Law No. 10 and contends that the membership in a group which was connected with the commission of a crime as defined in Law No. 10 suffices to warrant punishment and characterized the Economic Organizations and even the I. G. Farben as such a group as defined by the decision of the Control Council. In this regard it must be stated:

a. The I. G. Farben is a commercial firm, but no "organization or association" as defined by the decision of the Control Council.

b. The Reich Group Industry and or the Economic Group Chemical Industry is no organization or association as defined by this decision which was connected with the commission of a war crime.

c. Even if this were the case, a member of such an organization or association can be punished at most if he participated in the crimes of this organization in a form of participation consistent with the customary penal laws under a - d of the Control Council Law, that is, on the basis of the generally recognized legal maxims intentionally and with personal guilt in the knowledge of the illegality of such an action.

To substantiate my legal interpretation may I refer to the expert opinion of attorney-at-law Theodor Klefisch, a specialist in this field, of Cologne, which was submitted by me, which I submitted as

\ Schn. Doc. 156, Ident. No. 159, in Vol. IX, p. 1-30.

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- * 32. Without his own initiative and without his application Schnitzler was admitted into the NSDAP in 1937 and was not "infected with National Socialist ideologies."

Schn. Exh. 160/1 and 170, Vol. IX, p. 31/34, p. 59/60.

Differences with the party and especially with Gauleiter Sprenger. In spite of the pressure exerted by the Gauleiter, the confidential agent of the Gauleiter, Herr Avieny, was rejected as a member of the Aufsichtsrat. Schnitzler never used the "Heil Hitler" greeting in the Directorate Department.

Schn. Exh. 162/3, Vol. IX, p. 35/41.

"Courageous profession of Christian ideology and resulting differences with the party."

Sch. Exh. 165/67. Vol. IX, p. 46/54.

In numerous cases he protected persons who were being persecuted by the Gestapo for political or racial reasons through assistance in foreign countries, for example

a. his secretary, Exh. 163, Vol. IX, p. 39/41.

b. many racial persecutees through material assistance in Italy:

Schn. Exh. 169, Vol. IX, p. 57/58.

c. Carl v. Weinberg and Geheimrat Dr. Arthur v. Weinberg,

Schn. Exh. 198/99. Vol. IX, p. 64/68.

through procuring a position with the I. G. Farben,.

e. g. Editor of the "Frankfurter Zeitung", Dr. Max v. Brueck, Schn. Exh. 171, Vol. IX, p. 61/62,

the former Austrian Minister and Ambassador, Theodor Hornbostel, Schn. Exh. 176, Vol. IX, p. 73/74.

the painter, Georg Heek, Schn. Exh. 177, Vol. IX, p. 75/76.

the Jewish physician, Dr. Rosengart, Schn. Exh. 195, Vol. XI, p. 56/57.

as well as assisting them in other ways at personal risk, e.g.

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the Protestant minister, Wilhelm Fresenius,
Schn. Exh. 167, Vol. IX, p. 52/54.

the Editor-in-chief of the "Frankfurter Generalanzeiger",
Erich Dombrowski, Schn. Exh. 168, Vol. IX, p. 55/56.

the now editor-in-chief of the magazine "Die Gegenwart",
Benno Reifenberg, formerly "Frankfurter Zeitung,"
on the occasion of his flight, Schn. Exh. 172, Vol. IX, p. 63/4.

Severin Boyer, Schn. Exh. 173, Vol. IX, p. 65/66.

Camilla Schenk Freifrau v. Stauffenberg, nee Lady Camilla
Acheson, niece of Sir Alexander Cadogan, wife of the nephew
of the man who attempted Hitler's life on 20 July 1944,
Schn. Exh. 174, Vol. IX, p. 68/70.

Auguste Brunnabend and her child,
Schn. Exh. 178, Vol. IX, p. 77/78.

the present Stadtrat Dr. Fried Luebbecke.
In 1934 upon the instigation of the Party the witness was
supposed to be arrested by the emergency police squad.
Schnitzler granted him asylum in his home and took him in
his own automobile out of the city over the Taunus to
safety although the streets were fenced off by SS patrols.
Schn. Exh. 164, Vol. IX, p. 42/45.

With respect to Schnitzler's personal attitude with regard
to the war I wish to quote from the affidavit of University
professor, Dr. Erwin Rousselle. Schnitzler said to him in 1942:

"During the course of history, men in general have shrunk
from starting wars and were possessed of a sufficient
feeling of responsibility towards their own people instantly
to stop senseless and hopeless wars. The amazing thing about
this insane war is that Germany is continuing the war in
spite of the fact that the outcome has long since been
decided, as a matter of fact, was decided already from the
very beginning."

Schn. Exh. 175, Vol. IX, p. 71/72,

and on 1 September 1939 he said to Kugler at the outbreak of war:

"A whole life's work has collapsed. How is one to build
up that which now lies in ruins?"

With respect to Schnitzler's attitude toward social welfare
matters and his conduct towards employees and workers may I refer

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to the document which, without my asking for it, came to me from Frankfurt dated 1 March 1948 from 29 of his subordinates; Schn. Exh. 202, Vol. XI, p.76/80:

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"The undersigned consider it as their obligation as human beings to testify that they know and honor Herr Dr. Georg von Schnitzler, who at present is on trial before the American Military Tribunal in Nuernberg, as a man of generous qualities and possessed of a highly developed social consciousness. He offered his advice and assistance to everyone, from the most modest worker and employee up to his colleagues in the Vorstand of the former I. G. Farbenindustrie A. G. and seldom did anyone go away from him unconsolated.

We, his former assistants, business friends and subordinates beg the High Tribunal in its deliberations to consider the faultless past of Herr Dr. v. Schnitzler, and to remember that he, as the responsible party for the fate of a large number of people and articles of immense value at a time of political rape by his own government, held a vulnerable position in industry, not supported by the protection of a single document granting him any safety whatsoever, such as the American constitution."

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Trial Brief Wurster

TRIBUNAL No. VI

Case No. VI

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TRIAL - BRIEF

for Dr. Carl WURSTER

presented by the Defense
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I n t r o d u c t i o n .

In compiling this Trial Brief the Defense Counsel for Dr. Wurster consider it to be their task to assist the Tribunal in sifting methodically on Dr. Wurster's behalf the enormous quantity of evidence submitted by the Prosecution against all the defendants. They are convinced that this examination of the facts will persuade the Tribunal of the complete innocence of the defendant. The absolute integrity of this unusual personality, which will be discussed in detail in Part V of this Trial Brief can already be seen from the response he got from those who worked with him until the beginning of this trial in the Ludwigshafen-Oppau plant, the scene of his major activities, whatever their religion, their profession, or their political views.

(Doc. T 506 and 507, Exh. W 47 and 48, Document Book
W I, p.90-92).

This is the man whom, although - as pointed out in the Opening Statement - he had no enemies, the Prosecution have involved in this the biggest trial in economic history, without first interrogating him once to find out what he had to say to the monstrous charges brought against him in the Indictment.

(Statement Dr. Wurster transcript English page 10922,
German page 11082).

The Defense Counsel for Dr. Wurster are convinced that Dr. Wurster would never have been indicted had the Prosecution taken the trouble, before bringing in their charges, to have a look at the man whom they were about to indict, and to ask him what he had to say to the indictment.

Convinced as they are that in Dr. Wurster's case the facts speak eloquently in his favour, the Defense Counsel for Dr. Wurster will in this Trial Brief be able to exclude almost entirely arguments of

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a theoretical nature. There are only a few theoretical questions which the Defense Counsel for Dr. Wurster will have to discuss: the Prosecution theory of the common plan or of conspiracy (Count V of the Indictment) in Section I, and their general theory of responsibility in Section II.

(Prosecution Trial Brief, dated 13 December 1947,
Part VI).

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There follows, in section III, a general statement of the fundamental attitude of the Defense Counsel for Dr. Wurster.

I. As for the theory of the common plan or conspiracy we would refer you first - to avoid repetition - to the pleas of these Defense Counsel who have discussed the theory in general terms as agreed. These pleas show that the following allegations made by the Prosecution are false:

- a) that I.G. participated in the so-called Nazi conspiracy (Prosecution Trial Brief, Part V, bottom of page 3)
- b) that there also existed a so-called I.G. conspiracy designed to support the Nazi conspiracy and to commit the acts listed in Counts I,II,III of the Indictment.-

As far as Dr. Wurster is concerned, the Defense can afford to limit themselves to adding the following statements: even if there had been a conspiracy, as alleged by the Prosecution, Dr. Wurster would not have participated in the conspiracy, since he would not have acted as he did act in his personal sphere of work regarding the various counts of the Indictment, as discussed in detail in this Trial Brief, had he participated in the conspiracy. To quote but one example: How could Dr. Wurster, when there was a shortage of sulphuric acid in 1937, have cut down supplies to explosives plants by 100% without disabusing them of the belief that he had made equal cuts in sulphuric acid supplies in the case of all buyers,

(Document W 585, Exh. W No. 6C. Document Book W II,
page 43)

how could he have done that, had he helped to prepare Hitler's wars of aggression by participating in the alleged conspiracy?

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II. As far as the general Prosecution theory of the collective responsibility of all members of the higher committees of I.G. for all measures taken by it I.G. is concerned, we would again refer you first to the pleas of these Defense Counsel dealing with the theory in general. Their exposition shows that in the case of a

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concern as immense as I.G., comprising countless and widely dispersed factories and countless different and extremely highly specialized spheres of work, a member of the higher committees can only be held responsible for what went on within his own sphere of responsibility. Regarding Dr. Wurster we would, however, like to point out the following in this connection: Dr. Wurster only became a member of the Vorstand and of the Technical Committee on 1 January 1938.

(Statement Dr. Wurster, transcript English page 10866,
German page 11057)

Although he ~~was an industrial chemist by profession~~ *had a professional training only as a chemist* and had been *only* ~~the~~ *so far* technical manager of a department of approximately 800 men, he was also appointed, at that date, Betriebsfuehrer for welfare of the Ludwigshafen-Cppau plant, thus assuming responsibility for the well being of more than 25 000 persons.

Collective responsibility, as far as Dr. Wurster is concerned, is therefore out of the question for the period prior to 1 January 1938. But in the face of Dr. Wurster's special position at that time the opinion that Dr. Wurster is jointly responsible for everything that happened in I.G. after 1 January 1938 is also absolutely untenable. He has described these special circumstances himself in an affidavit which the Defense have especially recommended to the attention of the Tribunal.

(Document W 304, Exh. W 30, Document Beck W I, P. 27)

They are characterized by the magnitude of the new tasks devolving upon Dr. Wurster after 1938 and by the magnitude of his immediate responsibility for the employees of the factory in his charge, a responsibility which, in view of the fact that the Ludwigshafen-Cppau plant was particularly vulnerable to air attack, steadily increased in extent in the course of the second world war which started no more than 20 months after the 1 January 1938.

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If Dr. Wurster had failed to concentrate all his energy on his own immediate sphere of responsibility from 1938 to 1945 and had attended instead to countless matters outside his sphere of work, he could rightly be blamed today for having failed to devote himself, especially during the war years, to the almost superhuman task which was his immediate concern, the more so as interference on Dr. Wurster's part

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in matters outside his personal sphere of work was, in view of his comparative youth and considering that he had only been a Member of the Vorstand and of the Technical Committee for a short time, bound to cause considerable friction. It is on the strength of these considerations that the Defense Counsel for Dr. Wurster consider themselves justified in limiting their presentation of evidence to this Tribunal in the main to those matters which concern Dr. Wurster's sphere of responsibility.

III. Although the Defense Counsel for Dr. Wurster limited their presentation of evidence on his behalf to his personal sphere of responsibility they could not rest satisfied with refuting the evidence paltry though it was, submitted against him by the Prosecution. *) It was their duty to present to the Tribunal a general picture of the life and work of Dr. Wurster to enable the Tribunal to form an opinion of Dr. Wurster's whole personality.

The picture of Dr. Wurster's personality as a whole is important for two reasons: First, within the scope of this trial purely subjective considerations play an important part in several respects. Thus, in connection with delus in Count I of the Indictment, special importance attaches to the question ^{of} what a defendant imagined to be the ultimate aim of Hitler's policy. No tribunal can however reach a decision on such highly subjective matters unless it attaches decisive importance to the picture of the defendant as a whole.

Secondly, the picture of Dr. Wurster's personality as a whole must be drawn because the Indictment contains extremely extensive definitions of offences and vague formulations without specializing which charges are brought against individual defendants.

In view of these considerations it is the purpose of the picture of Dr. Wurster's life, work and personality as a whole

*) A list of the Prosecution exhibits discussed by the Defense Counsel for Dr. Wurster, giving page numbers of transcript and Trial Brief, will be found at the end of this Trial Brief as Appendix C.

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to demonstrate the truth of the following contention:

A man whose conduct within his personal sphere of work has been as exemplary as was Dr. Wurster's, cannot be supposed to have taken "a consenting part" within the meaning of Control Council Law No. 10 in punishable offenses (if any) outside his personal sphere of work, or that he so much as " deliberately closed his eyes" to punishable offenses (if any)

These considerations have enabled the Defense to refrain from discussing in detail countless matters outside Dr. Wurster's personal sphere of work, which would, in any case, have been practically impossible owing to the time limits imposed upon the Defense by the Tribunal. This is shown by the following examples:

a) In connection with Count III of the Indictment (Slave Labor) the statement of the witness Struss

(English transcript p. 13573, German transcript p. 13768) has shown quite clearly that, contrary to the allegations made by the Prosecution, the Technical Committee of the Vorstand of I.G. never concerned itself with the provision of labor. But in connection with the allegation made by the Prosecution in section 130 of the Indictment things are a little more complicated:

" In Farben's internal organization, the Technical Committee passed upon and recommended to the Vorstand the construction of barracks and concentration camps, together with installations and equipment necessary to house the slave labor. The Vorstand, thereupon, gave its approval to the projects so recommended and authorized the necessary expenditures."

Had the Defense Counsel for Dr. Wurster not been in a position to content themselves, as far as this point is concerned, with Dr. Wurster's general statements on the evolution of hutments and camps in I.G. plants during the war years

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(English transcript p. 11046-11047, German transcript p. 11249-11252)

connection with the explanation
~~in the course of the discussion~~ of Dr. Wurster's general attitude to the problem of so-called "slave labor" (Part III of this Trial Brief), they would have had to discuss in detail the countless hutment camps put up by the I.G. during the war; it would then have been shown that in almost all cases nobody except the persons immediately concerned knew to what uses the huts were to be put, nor was anybody in a position to find out owing to the large number of such applications for ~~huts~~^{credit} being submitted all the time; it would have been shown furthermore that the purpose for which the huts were to be used was in many cases changed several times. *)
b) As far as the "Betriebsfuhrer Conferences" and the so-called "Enterprise Advisory Council" (Unternehmensbeirat) are concerned the Defense Counsel for Dr. Wurster content themselves, in view of the detailed discussion of Dr. Wurster's humanitarian efforts on behalf of the foreigners in Ludwigshafen (Part III of the Trial Brief), with a few general statements. The evidence in this connection has shown that the so-called "Betriebsfuhrer Conference", which Dr. Wurster attended, was not a committee with administrative authority, but merely an institution to enable the Betriebsfuhrer to exchange ideas and discuss experience gained on such subjects (e.g. pensions, allowances etc) in which the State allowed the employer to have a say in matters of social welfare.

(Statement Dr. Schneider, English transcript p. 7394-7395, German transcript p. 7459-61, Statement Dr. Wurster, English transcript p. 10913/4, German transcript p. 11071).

As far as the "Enterprise Advisory Council" is concerned, the evidence submitted by the Defense has shown, that it was a committee which consisted, apart from the chairman,

*) The huts of the workers' camp at Mönchwitz are a typical example

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of this. They were originally intended for German workers from outside and were earmarked for concentration camp inmates when nearing completion. (Prosecution Document NI-14524, Procs. Exh. 2126, statement Doerning English transcript p. 1392⁴, German transcript p. 14218, statement Dr. Duerrfeld English transcript p. 11734, German transcript page 11947),

Verstand and Technical Committee were only informed thereof, when the huts were ready for use, and the men had already moved in: statement Jaehne, English transcript p. 9961, corrections p.9966, German transcript p. 10098, corrections p. 10102).

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of employees representatives, the meetings of which the Betriebs-
fuhrers merely attended as guests.

(Statement Dr. Schneider, English transcript p. 7394,
German transcript p. 7459
Statement Dr. Wurster, English transcript p. 10913,
German transcript p. 11071).

c) In some Prosecution documents concerning matters outside Dr.
Wurster's sphere of responsibility, Dr. Wurster is mentioned as recipient
of a carbon copy or of a circular letter etc. In this connection, too,
the Defense Counsel for Dr. Wurster have merely shown quite
generally that the fact that Dr. Wurster's office received a letter
does not, in view of the large quantity of incoming mail, by any
means prove that Dr. Wurster has seen or read that letter.

(Statement Morgenthau, Document W 225, Exh. W 32, Document
Beck W I, page 43)

Dr. Wurster himself has stated that the fact that his name appears
on a distribution list does not justify the assumption that he had
actually been informed of the document.

(Statement Dr. Wurster, English transcript p. 10874, 10911
German transcript p. 11065, 11068).

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Part I

Planning, preparation, initiation and waging of wars of aggression and invasion of other countries.

(Count I)

Section I of the Indictment brings this charge against all the defendants " acting through the instrumentality of FARBEN and otherwise, with divers other persons during a period of years preceding 8 May 1945, participated in the planning, preparation, initiation and waging of wars of aggression and invasions of other countries.....".

In part I of its Trial Brief of 6 December 1947, the Prosecution defined more precisely its theory on this count, thereby making a distinction between the external facts and the subjective elements of the crime. In this connection, the Prosecution points out, as being of essential importance, the fact that all the defendants occupied high positions in the financial, industrial and business life of Germany. It is true, that in the opinion of the Prosecution, the mere holding of an important position does not make the holder automatically an accessory in Crimes against the Peace in the sense of the penal code, but the holding of these high positions is a factor in the assessment of the act and the state of mind.

The Defense Counsel for Dr. Wurster refrain from entering into a critical discussion on the theory of the Prosecution concerning Part I of the Indictment, which it explicitly declares to be erroneous, since even if the theory of the Prosecution is accepted, the evidence proves unambiguously that Dr. Wurster is in no way guilty on Count I. In order to explain this, it is proposed to split the undermentioned statements into the following three main groups:

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- I. The positions held by Dr. Wurster in the financial, industrial and business life of Germany (including the I.G.)
- II. Dr. Wurster's participation in the act of Count I.
- III. Dr. Wurster's personal attitude towards Count I.

I.

The positions held by Dr. Wurster in the financial, industrial and business life of Germany. (Including the I.G.)

Supplement A of the Indictment lists a number of positions which Dr. Wurster is supposed to have held from 1932 to 1945. The examination of the evidence shows that Dr. Wurster did not hold a single one of these positions ^{from} ~~after~~ ^{on} 1933. To get a clear view, the time should be divided into the following four distinct periods:

- 1) prior to 30 January 1933,
- 2) during the period from 30 January 1933 to 31 December 1937,
- 3) from 1 January 1938 to 1 September 1939,
- 4) after 1 September 1939.

1) Dr. Wurster's positions before 30 January 1933.

The documents submitted by the Prosecution do not show that Dr. Wurster held before 30 January 1933 any of the positions listed in Supplement A of the Indictment. The evidence of the Defense reveals - as ^{shown} in sections 2-4 - that if Dr. Wurster did in fact occupy any position at all of those listed in Supplement A, then he did so only after 30 January 1933. On 30 January 1933, Dr. Wurster occupied no higher post than that of a chemist in the Ludwigshafen-Cppau Works, drawing a monthly salary of a few hundred marks ^{holding} and no title at all.

(Statement by Dr. Wurster, English transcript page 10922
German transcript page 11083

2) During the period between 30 January 1933 and 31 December 1937

Dr. Wurster held the following positions of those listed in Supplement A of the Indictment:

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a) starting in about 1937, he was occasionally consulted on problems connected with sulphuric acid as an Honorary Consultant of the Office for German Raw and Industrial Materials (Reichstoffamt). Dr. Wurster did not hold any official position there, nor was he given any power of attorney or authority to make decisions.

(Deposition Dr. Pehland, Doc.W 194, Exh.W 78, Document Beck W II, P.72
Statement by Dr. Wurster, English transcript P.10941/2,
German transcript P.11102),

b) Moreover Dr. Wurster became chairman of the so-called Sulphur-Subcommittee of the I.G. in 1934 - this is not listed in Supplement A of the Indictment.

(Statement Dr. Wurster, English transcript P. 10939,
German transcript P. 11100).

Contrary to the statements contained in Supplement A of the Indictment, Dr. Wurster was never chairman of the Inorganic Committee of the I.G.

(Statement Dr. Struss, English transcript P. 1903
German transcript P. 1892).

2) From 1 January 1938 to 1 September 1939.

a) On 1 January 1938 Dr. Wurster became first a deputy member and a few months later, a full member of the Vorstand of the I.G.

(Statement Dr. Wurster, English transcript P. 10866
German transcript P. 11058),

b) on the same date, 1 January 1938, Dr. Wurster became member of the Technical and Chemicals Committee of the I.G.

(Statement Dr. Wurster, English transcript P. 10914
German transcript P. 11071),

c) on the same date, 1 January 1938, Dr. Wurster also became Betriebs-fuehrer at Ludwigshafen-Cppau. This did not mean that he was responsible for the technical management of the entire Ludwigshafen-Cppau plant; he was responsible only for social welfare questions for the entire plant.

(Statement Dr. Wurster, English transcript P. 10868
German transcript P. 11059,
Document W 3, Exh1 W 2, Document Beck W I, Page 25).

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Dr. Wurster was never chief of a Upper Rhine Plant Community.

(Statement Dr. Struss in Pros. Exh. 392, Document NI-10,158, Pros. Document Book XV, Page 125 and Document Book W I, Page 20.)

- d) towards the end of 1938 - that is, after he already held the positions under a-c - Dr. Wurster became, through a decree of the Gauleiter, a member of the NSDAP (without holding rank), after having previously refrained from applying for membership.

(Statement Dr. Wurster, English Transcript Page 10.914, German Transcript Page 11.072.
Deposition Dr. Storch, Document W 186, Exh. W 39, Document Book W I, Page 67.)

In the case of such a purely formal and compulsory membership, one can certainly not speak of a "position".

- 4) During the period commencing 1 September 1939 until the occupation of Ludwigshafen on 21 March 1945

Dr. Wurster held, in addition, the following positions listed in Supplement A of the Indictment:

- a) In about 1939 or 1940, Dr. Wurster became member of the Aufsichtsrat of the Duisburger Kupferhuetten.

(Deposition Dr. Kuss, Document W 255; Exh. W 35; Document Book W I, Page 54.)

- b) In about 1940 or 1941, Dr. Wurster became member of the Aufsichtsrat of the Southern German Holzvorzuckerungs A.G.

(Deposition Dr. Mulert, Document W 246; Exh. W 36; Document Book W I, Page 57.)

- c) In 1941 Dr. Wurster became President of the Chamber of Industry and Commerce (later Chamber of Economics) in Ludwigshafen.

(Deposition Dr. Ernst Kamm, Document W 133, Exh. W 37, Document Book W I, Page 61.)

Contrary to the assertion contained in Supplement A of the Indictment, for which the Prosecution did not submit any evidence, Dr. Wurster was not a member of the Advisory Council of the Chamber of Economics Westmark in Saarbruecken.

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- d) Also, it was only during the war, that Dr. Wurster became District Chairman for Saarpfalz of the Economic Group Chemical Industry.

(Declaration by the Vorstand of the "District Association for the Chemical Industry in the Palatinate". Document W 223, Exh. W 38, Document Book W I, Page 65.)

- e) At the beginning of 1944, Dr. Wurster became chief of the Sub-Group for Sulphur and Sulphur Compounds, Economic Group Chemical Industry.

(Document W 501, Exh. W 76, Document Book W II, Page 68 and deposition Hermann Schuster, Document W 243, Exh. W 77, Document Book W II, Page 69.)

Dr. Wurster was never deputy chairman or member of the Praesidium of the Economic Group Chemical Industry, as asserted in Supplement A of the Indictment.

(Deposition Dr. Hermann Schlosser, Document W 177, Exh. W 80, Document Book W II, Page 76 and Document W 502, Exh. W 79, Document Book W II, Page 74.)

- f) We will not deal here in further detail with Dr. Wurster's appointment as ^{Economy} Military/Leader by the Reich Ministry of Economics, since this was not a position, but a mere title having no practical significance whatsoever.

Re 1 to 4.

The Prosecution did not submit any evidence to show that Dr. Wurster was in addition - as asserted in Supplement A of the Indictment - at any time chairman or board member of other industrial firms, combines and enterprises within Germany, the occupied countries and elsewhere.

Summary of I.

A critical evaluation of the evidence - as contained in the arguments under 1-4 - shows that Dr. Wurster held no "high" positions in the financial, industrial and economic life of Germany. The positions which he held, aside from the Vorstand, TGA and CHEMA of the I.G., (3a and 3b) can be summarized under 3 categories: -

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aa) Until 1 January 1938, Dr. Würster was essentially only a chemist. After 1 January ¹⁹³⁸ he became the Betriebsführer of a large plant (3c) whose conceived his main task to consist in taking care of the men in his plant, who had been entrusted to him.

(Affidavit Dr. Würster, Document W 304, Exh. W 30, Document Book W I, Page 27.)

bb) At the same time, Dr. Würster, as chemist, was developing into a front rank expert in the field of sulphuric acid chemistry; he owes a number of his positions to his ability in this field, for instance the positions under 2a, 2b, 4a, 4b and 4c.

cc) During the war, Dr. Würster, as the Betriebsführer of the largest industrial plant in his native province, the Palatinate, was offered certain positions in the economic life of his home district. These are the positions 4c and 4d.

This does not mean that the positions held by Dr. Würster in the industrial and economic life, were such as to qualify him as one of the leading personalities in German Industry. As Betriebsführer for social welfare problems of the Ludwigshafen-Oppey Works ^(aa) he held ~~(aa)~~ within the narrow confines of a particular district (Palatinate) certain positions of a strictly local importance (cc) and within a narrowly limited ^{technical} industrial field (sulphuric acid) he had a certain importance as an expert (bb).

II. The External Facts.

In the Trial Brief of 31 December 1947, Part I, the Prosecution defined the external facts of the crime by stating that whoever bears a substantial responsibility in the conduct of activities which are vital to furthering the military power of a country, "participates" in a Crime against Peace.

All the evidence shows that there can be no question of Dr. Würster having furnished the external elements of a Crime against Peace, as defined above by the Prosecution (but not accepted by the Defense), neither before nor after the outbreak of the war.

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A.

Prior to the outbreak of war.

Dr. Wurster held only those positions mentioned under I), number 2 and 3. A critical assessment of the evidence clearly shows that Dr. Wurster's conduct did not furnish the external elements of participation in a crime against peace, as will be shown in the following, either by being a member of the Vorstand, Technical Committee, and Chemicals Committee of the I.G. (Number 1), or by his position in the Ludwigshafen-Cppau plant (number 2) or by his activities outside the Ludwigshafen-Cppau plant (number 3)

1) As member of the Vorstand, Technical Committee and Chemicals Committee, Dr. Wurster cannot be made legally responsible for all the activities with which the I.G. was indicted in Count I.

In conjunction with the defense of Dr. Wurster it is an open question whether the activities of I.G., taken as a whole, furnish the external elements of participation in the crime against peace within the meaning of the Prosecution's definition. In no way can it be assumed that Dr. Wurster was legally responsible for all the activities of the I.G. In their Trial Brief Part VI of 13 December 1947 the Prosecution advances the theory that every person who was a member of the I.G. Vorstand, is personally responsible for this Konzern's activities which were indicted under Count I, either because he had assisted in determining the policy during the initial stage, or had later on sanctioned or approved the activities in question. The Prosecution has not submitted any evidence to prove that Dr. Wurster assisted during the initial stage in determining the policy of I.G. as alleged by the Prosecution. The defense documents

Affidavit Dr. Max Scharff, Document W 175, Exh. W 22,
Document Beck W I, Page 5, and
Affidavit Dr. Otto Seidel, Document W 180, Exh. W 23,
Document Beck W I, Page 7,

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show beyond all doubt that this was not the case, because Dr. Wurster did not enter the Vorstand, Technical Committee, and Chemicals Committee until 1 January 1938, i.e. 20 months before the outbreak of the war.

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Neither did the Prosecution submit any evidence to prove that Dr. Wurster sanctioned or approved the activities of I.G. after he joined the Vorstand, Technical Committee, and Chemicals Committee, as alleged by the Prosecution under Count I. The testimony of Dr. Wurster in his direct examination,

(English Transcript page 11922- 23, German Transcript page 11082.)

shows that no questions of home or foreign policy were ever discussed in the higher Select Committees in his presence after 1 January 1938, neither was the question of I.G.'s general line of action in things political ever discussed. There can, therefore, be no question of Dr. Wurster having sanctioned or approved I.G.'s activities as a whole, as alleged by the Prosecution under Count I. That this is the case is also shown by Dr. Wurster's affidavit

Document W 304, Exhibit W 30, Document Beck W I, Page 27.

Dr. Wurster's Defense is therefore of the opinion that when dealing with the question of whether Dr. Wurster furnished the external elements of a crime against peace, only his personal activity can be taken into account. (Compare Introduction II).

2) Dr. Wurster, by reason of his position in the Ludwigshafen-Cppau Plant, did not furnish the external elements of participation in a crime against peace.

Until 31 December 1937 Dr. Wurster was Manager only of the Department for Inorganic Production in the Ludwigshafen-Cppau Plant.

(Testimony Dr. Otto Seidel, Document W 180, Exh. W 23, Document Beck W I, Page 7).

After 1 January 1938 he ^{kept supervising the} ~~took over the whole~~ technical management of the Inorganic Plants

(Organizational Plan Document W 3, Exh. W 2, Document Beck W I, Page 25).

but after 1 January 1938 Dr. Wurster was mainly active as Betriebs-
fuhrer of the entire plant for questions of social welfare.

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The Prosecution's documents contain nothing at all which shows the activities of the inorganic manufacturing plants of the Ludwigshafen-Cppau Works before the outbreak of war. As Dr. Wurster was not responsible, even after 1938, for the technical development at Ludwigshafen-Cppau outside the inorganic sector (Exh. W 2), Dr. Wurster's Defense could confine itself to invalidating the Prosecution's statement regarding the mobilization preparations at Ludwigshafen-Cppau after 1 January 1938. The Prosecution has failed to bring proof that in this connection Dr. Wurster prepared the plant for a war. Dr. Wurster's testimony shows the contrary to be the case.

(English Transcript Page 10925 - 10939,
German Transcript Page 11085 - 11100).

Here Dr. Wurster not only described from memory the development of the so-called mobilization question at Ludwigshafen, but also dealt with the more important documents submitted in this connection by the Prosecution, so that it will not be necessary to refer again here to the Prosecution's documents in question. (Compare the Prosecution Exhibits in Supplement C of the Trial Brief containing references to pages of the transcript dealing with the same point). The main result of Dr. Wurster's statement based on the Prosecution documents - also confirmed by the testimony of the witness Huehnemann - is as follows:

- a) the Ludwigshafen-Cppau Plant was not extended for armament purposes; even its normal technical development was hindered by the authorities, who considered that the Ludwigshafen-Cppau Plant, by reason of its situation - it was very near the German-French border - would be exposed to danger in the event of war.

(Testimony Dr. Wurster, English Transcript Page 10925,
German Transcript Page 11086).

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Moreover, it was even being considered whether plant installations at Ludwigshafen-Cppau should be transferred to other localities.

(Testimony Dr. Wurster, English Transcript Page 10928, German Transcript Page 11089.)

The testimony of the witness Huehnermann regarding Prosecution Exhibit 2221 (see annotation) shows that these transfer plans were made "for the event of a French invasion of the Saar and the area of Ludwigshafen",

(English Transcript Page 13507, German Transcript Page 13802.)

and that these plans did not only apply to the Ludwigshafen-Cppau Plant, but to the whole industry in that area. From these transfer plans the Betriebsfuehrer of a plant in this area could not conclude ^{an} that the government was planning aggressive war.

(Testimony Huehnermann, English Transcript Page 13521, German Transcript Page 13819.)

- b) At the outbreak of war in 1939 the Ludwigshafen-Cppau Plant had no binding production program in case of mobilization. It was not until a few days prior to the outbreak of war that the plant received the draft of a mobilization production program with a request for comment.

Annotation:

Document NI-7452, Prosecution Exhibit 2221, which the Prosecution submitted during the cross-examination of the witness Huehnermann, is only being taken into consideration within the framework of this Trial Brief in so far as the Witness Huehnermann made it the theme of his testimony. The Tribunal has rejected Prosecution Exhibit 2221 as a rebuttal document.

(English Transcript Page 14055^{and} 14067, German Transcript Page 14379^{and} 14391/92.)

It was only offered for identification as cross-examination document; the Prosecutor did not expressly say so when submitting it, but it can be seen from the Prosecutor's remark: "it has not even been presented."

(English Transcript Page 13520, German Transcript Page 13817.)

For the rest, the document would have been without any evidential value, even if it had been submitted in evidence as cross-examination document, because it contains only unfinished and unsigned drafts of subordinate officials.

(Testimony Huehnermann, English Transcript Page 13519, German Transcript Page 13816.)

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The outbreak of war and the official introduction of this first draft of a mobilisation production program came as a complete surprise to the plant..

(Statement Dr. Wurster, Engl. Transcript, page 10934,
German Transcript, page 11094/95;

Testimony Dr. Mehner, Doc. W 140, Exh. W 49, Doc. Book
W II, page 2).

Before the outbreak of war Dr. Wurster never attended any conferences on mobilisation plans.

(Statement Dr. Wurster, Engl. Transcript, pages
10933, 11114,
German Transcript, pages 11093, 11354;
Statement Huehnermann, Engl. Transcript, pages 13521,
German " " pages 13818/19).

The meeting of 28 June 1939 mentioned in Prosecution exhibit No. 2221 which Dr. Wurster attended did not deal with mobilisation plans for the Ludwigshafen-Oppau plant, but ^{with} the question of transfer of certain products ^{ions.}

c) The development of production in the Ludwigshafen-Oppau plant in 1939 does not show any conversion to production for mobilisation purposes or any conspicuous increase or other general change in production..

(Doc. W 107, Exh. W 51, Doc. Book W II, page 12).

The assertions of the Prosecution as to the "vital furthering of the military power of Germany" have therefore been definitely refuted as far as Dr. Wurster's activities at Ludwigshafen-Oppau prior to 1 September 1939 are concerned.

3) Dr. Wurster's activity outside the Ludwigshafen-Oppau plant did not constitute participation in a crime against peace either..

Outside the Ludwigshafen-Oppau plant Dr. Wurster only acted as chairman of the so-called Sulphur Sub-Committee of the I.G. (I 2b) and occasionally as honorary consultant of the Raw Materials Office (see I 2a) before 1 September 1939. This work in the main involved technical problems connected with sulphuric acid. That these activities did not constitute participation in a crime against peace within the meaning of the indictment will be demonstrated in the following order:

- a) The general development in the field of sulphuric acid prior to 1 September 1939,
- b) Oleum (fuming sulphuric acid) in particular,
- c) Sulphuric acid produced from gypsum in particular,
- d) Accumulation of stocks of pyrite in particular,
- e) Smoke producing agents.

Ad a) The general development in the field of sulphuric acid prior to 1 September 1939

The Prosecution have not submitted any evidence to show that the development in the field of sulphuric acid prior to 1 September 1939 represented a "vital" contribution to the furthering of the military power of Germany. The opposite follows from Dr. Wurster's affidavit:

Doc. W 295, Exh. W 4, Doc. Book W II, page 17

in connection with Dr. von Nagel's testimony

Doc. W 300, Exh. W 5, Doc. Book W II, page 27,

and also from the Dr. Wurster's statements in the witness box

Engl. Transcript, pages 10946 - 10955,

German " " 11107 - 11116.

At the same time Dr. Wurster defined his attitude to the more important documents submitted by the Prosecution in this connection (c.f. Appendix C to this Trial Brief), so that there is no need to subject these documents to another critical examination. The evidence has therefore, in the main, shown the following:

- aa) From the point of view of armament economy the importance of sulphuric acid is extremely small.

(Prosecution witness Elias, English Transcript, pages 1453, 1454, German Transcript, page 1428).

The diagram

(Appendix to Document W 295, Exh. W 4, Doc. Book W II, page 17)

shows that only 5 - 8,4 % of the German production of sulphuric acid were used for the production of explosives in the three peace time years 1936-1938 whereby the actual consumption of sulphuric acid for the production of explosives amounted only to one fifth of these quantities i.e. to 1 - 1,7 % of Germany's total consumption of sulphuric acid (Exh. W 4, II, par. 4). This, moreover, includes the very considerable requirements of explosives

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for civilian purposes (coal and mineral ore mining, road construction, reconstruction of towns etc.)

(Statement Dr. Wurster, English Transcript, page 10949,
German " " 11109).

These facts are confirmed by the minutes of the meeting of the Sulphur Sub-Committee of 13 January 1937 which have been submitted as

Document W 603, Exh. W 53, Doc. Book W II, page 28.

- bb) Sulphuric acid is not a raw material for the production of explosives, but only an auxiliary product which is not contained in the final explosive at all.

(Statement by the Prosecution witness Elias,
English Transcript page 1453,
German Transcript page 1427,
Statement by Dr. Wurster, English Transcript, page 10950, German Transcript, page 11110).

- cc) It is impossible to draw a conclusion as to the actual production of explosives from the sulphuric acid consumption of an explosives factory, because it depends on the technical process applied, how much of the sulphuric acid used as an auxiliary product is lost or reclaimed.

(Statement by Dr. Kuehne, Engl. Transcript, page 10132,
German " " 10270
Statement by Dr. Wurster, Engl. Transcript, " 10950,
German " " 11110).

- dd) The paramount importance of sulphuric acid for purely civilian requirements follows from the appendix to

Doc. W 295, Exh. W 4, Doc. Book W II, page 17:

nearly half of the sulphuric acid produced was in accordance with that document, used in the manufacture of nitrogen and phosphorus fertilizer

(Statement by Dr. Wurster, Engl. Transcript, page 10952,
German " " 11112);

a very considerable and steadily growing percentage of the production of sulphuric acid was used in the manufacture of synthetic fibres. This is confirmed by the excerpt from the minutes of the meeting of the Sulphur Sub-Committee of 13 January 1937 which have been submitted as

Doc. W 603, Exh. W 53, Doc. Book W II, page 28.

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- ee) It is true that Germany's production of sulphuric acid increased in the years before the outbreak of the war, but its development lagged far behind the corresponding development abroad and behind world development.

(Doc. W 295, Exh. W 4, Doc. Book W II, page 47, paragraph II, section 1).

- ff) I.G.'s production of sulphuric acid did not by any means assume in 1933 - 1936 the proportions of 1927/28, prior to the economic crisis;

(Statement by Struss, Engl. Transcript, page 4110, German Transcript, pages 4138);

from 1936 till the outbreak of war it lagged behind the development abroad and behind world development even more than German production as a whole did.

(Doc. W 295, Exh. W 4, Doc. Book W I).

I.G. pursued a policy of extreme caution in its investments in the field of sulphuric acid

(Statement by Dr. Wurster, Engl. Transcript, page 10953, German " pages 11113/14, in conjunction with Prosecution Exh. 750, NI-6728, Prosecution Book XXXX, Engl. page 94, German page 120 quoted there).

- gg) The I.G. share in the German production of sulphuric acid amounted only to approximately 35 %

(Statement by Struss NI-7236, Prosecution Exh. 707, Book XXXVII, page 26).

- hh) The development of I.G. sulphuric acid production was determined by its ^{own} requirements for civilian purposes; the importance of I.G. supplies of sulphuric acid to non-I.G. works including the explosives plants (particularly the Dynamit-Aktiengesellschaft) decreased steadily and noticeably in the years before the war.

(Doc. W 295, Exh. W 4, Doc. Book W II, page 47, paragraph II, section 2).

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- ii) When a temporary shortage of sulphuric acid occurred in the years before the outbreak of the war, I.G. on Dr. Wurster's responsibility reduced supplies accordingly to explosives plants only. This follows from the documents submitted by the defense counsel for Dr. Wurster in Doc. Book W II in explanation of Prosecution Exh. No. 1940 (included for identification purposes in Wurster Book II, pages 38 - 42 as Wurster Exhibit 58 and 59):

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Doc. W 599, Exh. W 55, Doc. Book W II, page 30,
Doc. W 581, Exh. W 56, Doc. Book W II, page 32,
Doc. W 582, Exh. W 57, Doc. Book W II, page 35,
Doc. W 585, Exh. W 60, Doc. Book W II, page 43,
Doc. W 586, Exh. W 61, Doc. Book W II, page 44.

The most important among the documents mentioned is the Wurster-Exh. No. 60 in Book II, page 43, according to which the Generaldirektor of the Dynamit-Aktiengesellschaft, Dr. Paul Mueller wrote on 15 March 1937 to Dr. Wurster as follows:

"At the same time, I am forced to state that according to our files which we have gone through again carefully we had to be under the impression that you had reduced our supplies in the same ratio as those of your other customers. Had we known that, as you state yourselves, our supplies had been reduced by practically the whole amount of the shortages, it would have been"

b) Oleum (fuming sulphuric acid) in particular.

Oleum is best described as hyper concentrated sulphuric acid.

(Statement Dr. Wurster, Engl. Transcript, page 10956,
German Transcript, page 11117).

Oleum is not a product used specifically in the armaments industry either, but is used in practically all branches of chemical industry.

(Statement by Prosecution witness Elias, Engl. Transcript, page 1454, German Transcript, page 1428,
Statement by Dr. Wurster, Engl. Transcript, page 10956,
German Transcript, page 11117).

There is nothing in the Prosecution documents to show that Dr. Wurster actively promoted oleum production. The Prosecution have merely submitted a contract of 1937/38 concerning oleum apparatus

(Doc. NI - 4498, Prosecution Exhibit 601, Prosecution Doc. Book XXXIII, Engl. page 18, German page 28);

the unimportance of this apparatus for the absorption of oleum worth about 1,000,000 mark follows from the

statement by Dr. Wurster, Engl. Transcript, page 10956,
German Transcript, page 12117.

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These apparatuses were obtained on government orders; Dr. Warster personally had nothing whatsoever to do with this affair.

(Statement by Marek, English Transcript, Pages 3022-33,
German Transcript, Pages 3052-54.)

Ad c) Sulphuric acid produced from gypsum in particular.

In Document EC-144, Prosecution Exh. No. 602, Prosecution Document Book XXXIV, English Page 19,

reference is made, in connection with Count I of the Indictment, to the I.G. plant for the production of sulphuric acid from gypsum at Wolfen. In accordance with the evidence submitted by the Defense the following should be stated in this connection:

aa) Sulphuric acid produced from gypsum does not differ in any particular from sulphuric acid obtained from other raw materials, in particular from pyrite.

(Statement by the Prosecution witness Elias, English Transcript, Page 1453, German Transcript, Page 1427,
Statement by Dr. Warster, English Transcript, Page 10957,
German Transcript, Page 11118.)

bb) The I.G. plant for the production of sulphuric acid from gypsum at Wolfen was not erected for reasons of armament economy, but with regard to I.G. rayon and staple fibre production at Wolfen.

(Document W 601, Exh. W 65, Document Book W II, Page 49,
Document W 602, Exh. W 66, Document Book W II, Page 51.)

cc) The ^{profitability} ~~commercial value~~ of the sulphuric acid production from gypsum depends entirely upon the location of the plant. Wolfen satisfied fully the conditions of ^{for} ~~profitability~~.

(Document W 606, Exh. W 67, Document Book W II, Page 53,
Document W 607, Exh. W 68, Document Book W II, Page 54.);

dd) ever since 1933 foreign countries, too, were interested in plants for the production of sulphuric acid from gypsum and had built them - partly under I.G. license.

(Document W 578, Exh. W 62, Doc. Book W II, Page 46;
Document W 579, Exh. W 63, Doc. Book W II, Page 47,
Document W 580, Exh. W 64, Doc. Book W II, Page 48.)

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Thus, in December 1938 the Wolfen plant was
thrown open to French customers without hesitation.

(Statement of Dr. Wurster, English Transcript, Page 10959,
German Transcript, Page 11120.)

Ad d): Accumulation of stocks of pyrite in particular.
in

The Prosecution asserted/Section E of Count I of the Indictment
that "the I.G. procured and stockpiled critical war material for
the Nazi offensive". To prove that assertion the Prosecution have
merely submitted, as far as Dr. Wurster's sphere of work is con-
cerned, a series of documents in Prosecution Exhibit No. 749,
Document NI-8843,
Prosecution Document Book XXXX, English Page 85,

and also

Document EG-128, Prosecution Exh. No. 716, Prosecution
Document Book XXXVIII, English Page 94.

Two different things are involved in the various letters contained
in Prosecution Exhibit No. 749:

aa) Accumulation of stocks of 25 000 tons of pyrite in Doberitz
and Kruckow in 1934/35. This is identical with the accumulation
of stocks mentioned in Prosecution Exh. 716. This event is of
negligible importance; the storing of 25 000 tons of pyrite on
only
one occasion/has rightly been called a trifle by Dr. Wurster in
view of the fact that Germany's annual pyrite requirements
amounted to approximately 800 000 tons. Moreover, Dr. Wurster
personally had nothing whatsoever to do with this accumulation
of stocks. -

(Statement by Dr. Wurster, English Transcript, Pages 10960 -
10962, cross examination, English Page 11115, German Trans-
cript, Pages 11121 - 11123, cross examination German Page
11355.),

with interesting references as to the purely defensive ideas
expressed in Prosecution Exh. No. 716.

bb) The Prosecution Exh. No. 749 furthermore contains a letter written
by a Wehrmacht office to Dr. Wurster on 21 December 1937 (in-
cluded for identification as Exh. W 70 in Document Book W II,
Page 57); it is stated in this letter, dated 21 December 1937,
that pyrite stocks in Ludwigshafen by far exceeded normal stocks.

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The documents submitted by Dr. Wurster's Defense

Dcc. W 508, Exh. W 69, Document Volume W II, page 55,
Dcc. W 558, Exh. W 71, Document Volume W II, page 59,
Dcc. W 560, Exh. W 72, Document Volume W II, page 62,
Dcc. W 575, Exh. W 73, Document Volume W II, page 64

show that the stocks of pyrite at Ludwigshafen as mentioned in the letter of 21 December 1937 had nothing to do with "procurement and stockpiling of critical war materials for the National Socialist aggression", but had accumulated because during the Spanish Civil War the German authorities had insisted that imports of pyrites into Germany from Spain should be as large as possible in order to obtain quicker payment for German exports already sent to Spain.

(Wurster Exh. 71). It was planned to dispose of the stocks thus created within 5 ^{years.} / (Wurster Exh. 72). This was actually done, for on 30 June 1939 the I.G. pyrite stocks had been reduced to six months' requirements (Wurster Exh. 73). These stocks were normal and in conformity with the I.G.'s practice over many years.

(In this connection compare Dr. Wurster's statement, English transcript pages 10960/1, German transcript page 11121).
(Cross-examination, English page 11115, German page 11355).

The excerpt from Wurster Dcc. 579, Exh. W 63, re-copied in Wurster Volume II, page 65, shows that in 1937, for instance, the French chemical firms were also considering ensuring pyrite imports for the duration of the Spanish Civil War.

Re_o) Smoke Producing Agents.

In Prosecution Exh. 707, Prosecution Doc. Volume XXXVII, English page 26, reference has been made to the production of smoke producing agents by I.G.

Dr. Wurster's statement, English transcript pages 10965/66,
German transcript pages 11127/28

shows that, generally speaking, I.G. had hardly anything to do before the war with the production of smoke producing agents, and that Dr. Wurster personally had nothing at all to do with it.

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Summary re figure 3.

All this clearly refutes the allegations of the indictment regarding Count I, also as far as Dr. Wurster's activity before 1 September 1939 outside the Ludwigshafen-Cppau plant is concerned. It should likewise be put on record that neither did Dr. Wurster take part in the sense of Section C of the indictment in mobilizing Germany for war by his participation in the Four Year Plan. In connection with Dr. Wurster's defense it need not be reported that the Four Year Plan was not an instrument for preparing a war of aggression. In any case, the evidence adduced for Dr. Wurster shows that Dr. Wurster's participation in the Four Year Plan was practically nil. The only way in which he personally participated in the Four Year Plan was that, like many other German experts, in his limited specialized field he occasionally gave technical advice to the Office for Raw Materials (Compare I figure 2a). Objectively considered

Dr. Wurster's statement, English transcript page 10941,
German transcript page 11102,
shows that ^{the} ~~his~~ schemes in the technical field of his activities (Sulphuric Acid) within the scope of the Four Year Plan amounted to not more than 0.1% of the entire plan.

B.

Even Dr. Wurster's activity during the war,
according to the evidence submitted by the Prosecution, does not show that he can be held responsible for actions which were " of vital significance for the furthering of the military power of Germany". This can be shown by enumerating the various positions held by Dr. Wurster during that time (Compare I 2-4).
1) Dr. Wurster's activity as Betriebsfuhrer of the Ludwigshafen-Cppau Works (I 3c) during the war does not mean a vital furthering of Germany's military power. It is true the volume of production and consequently the staff of the Ludwigshafen-Cppau Works increased during the

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war, but Dr. Wurster, in his capacity as Betriebsfuehrer in social welfare affairs, is not responsible for that, because as early as the end of 1939 the entire production of the Ludwigshafen-Oppau Works was ^{continuously} ~~from time to time~~ regulated according to orders from the State control agencies.

(Dr. v. Nagel's statement, Document W 254, Exh. W 96, Document Volume W III, Page 19.)

Dr. Wurster's activity in Ludwigshafen-Oppau, in fact his entire professional work during the war ^{was} centered more and more

in looking after the workers employed in Ludwigshafen-Oppau from the human angle, especially in protecting them against the effects of the war.

(Dr. Wurster's statement, English Transcript Page 10924, German Transcript Page 11084 and Document W 304, Exh. W 30, Document Volume W I, Pages 30-31.)

2) The Prosecution documents in no way go to prove that Dr. Wurster's activity as chairman of the Sulphur Sub-Committee of I.G. (I 2b) was of "vital significance for furthering Germany's military power" during the war. The evidence adduced by the Defense does, however, prove,

a) that during the war sulphuric acid did not increase in the proper armament sector, but in the steadily-growing sector of artificial silk and cellulose fibres production. The steady increase in artificial silk production is shown by

Gajowski's Document 43, Document Volume Gajewski III, Page 15. From 1942 onwards artificial fibre production became the greatest consumer in Germany of sulphuric acid; thus it was this production which primarily benefited by the efforts to maintain the sulphuric acid production which was threatened by shortage of raw materials and by air raids.

(Document W 295, Exh. W 4, Document Volume W II, Page 24, II last paragraph of Figure 5.)

This also applies to the joint efforts of I.G. and D.A.G. (Dynamit A.G.) to reduce the loss in sulphuric acid in the production of explosives as mentioned in

Document NI-9487, Prosecution Exh. 391, Prosecution Document Volume XV, English Page 65.

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(See Schindler's statement, DAG Document 26, DAG Volume II, Page 66.)

- b) that the I.G. sulphuric acid deliveries to the explosives factories, especially to the Dynamit-Aktiengesellschaft plants steadily decreased even during the war.

(compare Document W 29⁵, Exh. W 4, Document Volume W II, especially table at top of Page 21.)

- 3) Nor do the Prosecution documents prove that during the war Dr. Wurster, in his capacity as honorary adviser to the Office for Raw Materials in the field of sulphuric acid (I 2a), was active to any appreciable extent. It is true, the Prosecution submitted

Document NI-5934, Prosecution Exh. 475, Prosecution Volume XXII, English Page 19

according to which Dr. Wurster is supposed to have been specialist delegate of the Plenipotentiary General Chemistry for sulphuric acid and a few other inorganic products at 1 April 1943. But

Document NI-820, Prosecution Exh. 463, Prosecution Volume XXI, English Page 172,

in connection with

Dr. Wurster's statement, English Transcript Page 10942,
German Transcript Pages 11102/3

shows that Dr. Wurster never really acted as specialist delegate of the Plenipotentiary General Chemistry; likewise

Dr. Pohland's statement in Document W 194, Exh. W 78, Document Volume W II, Page 72, Figure 4.

- 4) The Duisburger Kupferhuette (I 4a) of which Dr. Wurster was an Aufsichtsrat (Supervisory Board) member from 1939 or 1940, dealt with the purchase of pyrites, the basic raw material for the production of sulphuric acid and with the utilization of the remaining pyrite residue after the extraction of sulphur.

(Dr. Kuehne's statement, English Transcript Page 10100,
German Transcript Page 10237.

Dr. Wurster's statement, English Transcript Page 10943,
German Transcript Page 11103.)

Dr. Wurster's activity as Aufsichtsrat member of this company is, therefore, of no significance by itself, but was merely a natural consequence of his position as chairman of the Sulphur Sub-Committee of I.G.

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- 5) The Sueddeutsche Holzversuckerungs-A.G. (I 4b) of which Dr. Wurster became Aufsichtsrat member in 1940 or 1941, was engaged solely in the production of nutrient yeast from wood.

(Doc. W 246, Exh. W 36, Doc. volume W I, page 57),

so that in this case too no specific activity by Dr. Wurster in the field of armament economy has been proved.

- 6) The Prosecution documents say nothing about Dr. Wurster's activity as chairman of Ludwigshafen Chamber of Industry and Commerce (I 4c).

Dr. Wurster's statements, English transcript page 10921,
German transcript page 11081 and
Doc. W 133, Exh. W 37, Doc. volume W I, page 61

show that this activity of Dr. Wurster's was of no importance whatsoever to a war effort.

The same applies to Dr. Wurster's activity as Bezirksobmann (District Chairman) Saarpfalz of the Economic Group Chemical Industry (I 4d).

(Doc. W 223, Exh. W 38, Doc. volume W I, page 65).

- 7) Only during the last stage of the war did Dr. Wurster become head of the Subsection (Fachgruppe) Sulphur and Sulphur Compounds (I 4c). Wurster Exh. 76 and 77 in Wurster volume II, pages 68 - 71 as cited under I 4c, show that this activity of Dr. Wurster's which began in 1943/44, had nothing to do with "furthering the German military power for a war of aggression."

- 8) No special reference will be made here to Dr. Wurster's activity as chief of the Working Committee for Smoke Producing Agents, which began in 1942 or 1943, since smoke producing agents belong exclusively to the field of passive air defense.

(Dr. Wurster's statement, English transcript page 10965,
German transcript page 11127).

This is confirmed by Krauch Doc. 146 (Krauch volume IX, page 57)

~~in the completed form~~ ^{completing} Prosecution Exhibit 1919, Doc. NI-14071

("Enlargement of smoke agents production as a result of the new demands of passive air defense").

III.

The subjective elements of the case .

According to the theory of the Prosecution (which was not recognized by the Defense as being correct) the subjective elements of crimes against peace include "the knowledge that such military power will be used for the purpose of carrying out a national policy of aggrandizement to take from the peoples of other countries their land, their property, or their personal freedom. It is sufficient if there exists the belief that although actual force will be resorted to if necessary, such purpose will be accomplished by using the military power merely as a threat."

- 1) The evidence submitted by the Prosecution gives no reason for concluding that in the case of Dr. Wurster this *Particularly* ~~that is more,~~ dolus of Count I is present. ~~that is more,~~ the evidence of the Prosecution in no way shows that: -
 - a) Dr. Wurster received knowledge of the subjects which were discussed at any of the meetings, at which Hitler revealed to his close circle of collaborators his true aims before the outbreak of war. In this connection it should be mentioned that in the IMT trial only those defendants were sentenced on the count of preparation of aggressive wars, in whose case it was assumed that they knew about the subjects discussed at these meetings.
 - b) Dr. Wurster received any other information which enabled him to recognize the true aims of Hitler's policy.
- 2) On the other hand, the evidence of the Defense showed clearly and beyond all doubt that the dolus was not present in Dr. Wurster's case. The following is proof of this: -

a) As witness on his own behalf Dr. Wurster testified

(English transcript Page 10 923;
German transcript Page 11 083),

what he considered to be the meaning of re-armament; he could not know its aggressive character, because he had no idea of its extent.

(English transcript Page 10 939;
German transcript Page 11 100).

This statement coincides in its essential points with the evidence which the Defense as a whole submitted in regard to the "common knowledge" of German foreign policy as Defense Exhibit 53 - 159.

b) Judging from Dr. Wurster's whole character, as shown in affidavits Exhibits W 228 - W 256 in Document Book W VI, it seems unthinkable that this man would have lent himself to the carrying out of a policy, the aim of which it was to take from the peoples of other countries their land, their property, or their personal freedom. Special reference is made to the testimony of the present chairman of the Works Council (representatives of the staff) of the Ludwigshafen-Opbau Plant

Ernst Lorenz, Document W 137, Exhibit W 247, Doc. Book W VI, page 80,
the statements of

Dr. Josef Hille, Document W 126, Exh. W 254, Doc. Book W VI, page 102,

Dr. Mehnert in Document W 141, Exh. W 256, Doc. Book W VI, page 110,
all of which serve particularly to show the horror which

Dr. Wurster felt when war broke out in September 1939.

c) Various acts of Dr. Wurster during the period prior to the outbreak of war would be inconceivable, if he had wanted subjectively to support the preparations for an aggressive war.

These were: --

aa) According to the testimony of

Dr. Heiner in Document W 140, Exhibit W 49, Document Book W II, page 2,
Dr. Wurster, after taking over the plant management at Ludwigshafen-Opau on 1 January 1938 concerned himself very little with the mobilization question; he used to call it a "paper war" and stated that he had more important things to worry about.

bb) Document W 565, Exhibit W 60, Document Book W II, page 43,

shows that in 1937, when sulphuric acid was in short supply, Dr. Wurster, in his capacity as sulphuric^{acid} export of the I.G. started by cutting supplies to the explosives plants of the Dynamit-Actiengesellschaft.

cc) Up to shortly before the outbreak of war Dr. Wurster negotiated with foreign firms about the making available of technical processes - a thing which would have been inconceivable had he thought an aggressive war possible.

(Document W 574, Exhibit W 74; Document Book W II, page 66;
Document W 577, Exhibit W 75, Document Book W II, page 67;
Document W 295, Exhibit W 4, Document Book W II, page 24,
number 6).

The last document is supported by the affidavit of the former Generaldirektor of the Prager Verein, Max Mayer, who emigrated to USA,

Document W 313, Exhibit W 52, as appendix to Document Book W II, after page 26.

3) In his testimony (English transcript page 10 924, German transcript page 11 004, Dr. Wurster stated his subjective attitude to the war during the war. This statement, which bears out his whole character, shows clearly, that even during the war Dr. Wurster was never subjectively an instrument of Hitler's war policy.

Part II

Pillage and Spoliation. (Count II of the Indictment.)

Introductory Remarks.

The Prosecution has not brought any evidence to prove that Dr. Wurster has committed any action which would justify his being charged with participation in pillage and spoliation. The total insignificance of the evidence brought against Dr. Wurster in this connection is shown in the following statements. With regard to Dr. Wurster's generally disapproving attitude to the acquisition of foreign property in occupied territory, reference is made to Dr. Decker's statement in

Doc. W 311 Exh. W 85 Doc. Bk. W II Page 89,

which reveals that in October 1940, Dr. Wurster expressed himself very forcibly against the acquisition of a French factory in Lorraine which was required by the Gauleiter.

Section A

Dr. Wurster's trip to Poland.
(Prosecution Exh. 1134)

The Prosecution tries to manufacture a connection between the acts charged as pillage and spoliation in Poland, and Dr. Wurster, with the help of a single document,

Doc. NI-1149, Prosecution Exh. 1134, Doc. Bk. W, Engl. Page 34,
German Page 54.

This concerns notes dictated by Dr. Wurster on the trip made by a government official, Dr. Pohland, to Poland from 26 October to 1 November 1939; Dr. Pohland had asked Dr. Wurster to accompany him as technical adviser

(Dr. Pohland's statement Doc. W 170, Exh. W 82, Doc. Bk. W II, Page 79).

In the view of the Defense, Prosecution Exh. 1134 is irrelevant (see I), but in any case it does not justify Dr. Wurster's being held jointly responsible for the acts in Poland for which the charge of pillage and spoliation is brought (see II).

I. Irrelevancy of Prosecution Exhibit 1134.

When this document was submitted the Defense,

(cf. English transcript Page 2605, German transcript Page 2600)

only in accordance with the express wish of the Tribunal, raised no formal objection to Prosecution Exh. 1134, but explained the reasons why, in the view of the Defense, this document is irrelevant. The Defense still considers this document irrelevant and requests the Tribunal to disregard it, on the following grounds:

- a) This was not a finished report by Dr. Wurster, but merely a draft. The original document makes it clear that Dr. Wurster ^{put in his handwriting} wrote the word "Draft!" on it, with an exclamation mark.
- b) It is true that Dr. Wurster dictated this draft; since, however, Dr. Wurster was only Dr. Pohlend's companion and technical adviser on this trip (Exh. W 82), the ideas behind this draft cannot be ascribed to Dr. Wurster.
- c) The covering letter to Dr. Buergin shows that the notes were "of course dictated in some haste". Since the trip ended on 1 November, while the letter to Dr. Buergin bears the date 23 November, the word "haste" cannot - as the Prosecution thinks - mean that Dr. Wurster dictated the draft "in particular haste" after his return, but merely that he dictated it hurriedly and without detailed consideration and did not go over it afterwards.
- d) Neither this document nor the rest of the Prosecution's evidence shows that anything else happened to Dr. Wurster's hurriedly dictated draft of notes than that it was sent to Dr. Buergin. Neither does Dr. Buergin's reply to Dr. Wurster, dated 24 November 1939 indicate anything else.

(Doc. NI-1150, Pros. Exh. 1967)

Neither Pros. Exh. 1134 nor any of the rest of the Prosecution's evidence shows that any measures were taken, either by the I.G. or by any other authority on the basis of Prosecution Doc. Exh. 1134. (See II).

II. Prosecution Exhibit No. 1134 does not show that Dr. Wurster is guilty on Count II of the Indictment.

The Defense has provided its own evidence in connection with Pros. Exh. 1134; namely, on the material side of the matter

Doc. W 170 Exh. W 82 Doc. Bk. W II Page 79 and
Doc. W 609 Exh. W 83 Doc. Bk. W II Page 83 *)

1. There is no connection between the trip to Poland and measures taken by the German authorities.

There is no sort of connection between the Polish trip referred to in Pros. Exh. 1134 and any measures taken by the German authorities which could be considered as pillage and spoliation. The government official whom Dr. Wurster accompanied on this trip never saw Dr. Wurster's draft of notes at all; his trip had no practical results.

Dr. Pohland's statement Doc. W 170 Exh. W 82, Doc. Bk. W II Page 79;
Dr. Mulert's statement Doc. W 609, Exh. W 83, Doc. Bk. W II Page 83,
Dr. Krauch's statement Eng. transcript Page 5428-5429, German transcript Page 5457-5459.

2. There is no connection between the trip to Poland and measures taken by the I.G.

There is no connection between the fact that Dr. Wurster accompanied government official Dr. Pohland on his trip to Poland and any measures taken by the I.G. which have been described by the Prosecution as pillage and spoliation. This is proved in detail by the following:

a) The trip on which Dr. Wurster accompanied Dr. Pohland was made merely on the strength of a commission from the Reich Ministry of Economics and had nothing to do with the interests of the I.G.

Dr. Pohland's statement, Doc. W. 170, Exh. W 82, Doc. Bk. W II Page 79,
Dr. Krauch's statement, English transcript Page 5161, German transcript Page 5186.

*) As regards the personal aspect of this matter, the Defense has offered Doc. W 127, Exh. W 84 Doc. Bk. W II, Page 85. Exh. W 84 shows the clearly humane conduct of Dr. Wurster which came to light on this journey, both towards the Poles and towards the Jews. Cf. Part V of the Trial Brief and statements by two Polish workers, Exh. W 181 and W 183 Bk. W IV A Pp. 19 and 23.

- can be seen*
- b) As regards the contents of Prosecution Exhibit 1134, of the three firms mentioned in the Indictment (Wola, Winnica, Boruta), Dr. Wurster had not even visited two, namely Wola and Winnica; as far as the third firm (Boruta) is concerned, the trip included only a brief visit to one of the two factories of this firm.

(c.f. statement by Dr. Wurster, p. 10 971 of the English Court Transcript, p. 11 133/34 of the German).

- c) Prosecution witness Szpilfogel, joint owner of the firm of Wola did not know Dr. Wurster at all, even so much as his name.

(Statement by Szpilfogel, p. 2660 of the English Court Transcript, p. 2659/2660 of the German)

- d) The subject of the report delivered by Dr. Wurster to the Vorstand of the I.G. on 8 November 1939,

(Document NI-15 107, Prosecution Exhibit 2120)

was merely the effects of air attacks on Polish industrial installations; this point of view interested Dr. Wurster as Chief of a works which, situated on the western frontier of the Reich, was particularly vulnerable to air attack. It was, in fact, of paramount importance in the decision ~~as to whether he should~~^{to} comply with Dr. Pohlend's request that ~~he undertake~~^{to accompany him on} the trip, as is shown by ~~the contents~~^{numerous passages} of Prosecution Exhibit 1134, among many others,

(Statements by Dr. Wurster:

Cross examination, p. 11 096 of the English Court Transcript, p. 11 335 of the German,

Re-examination, p. 11 125 of the English Court Transcript, p. 11 365 of the German,

Statement by Dr. Pohlend, Document W 170, Exhibit W 82, Document Beck W II, p. 80, par. 3).

The report delivered by Dr. Wurster to the Vorstand on 8 November 1939 was therefore in no way connected with the measures taken later by the I.G. listed in Count II of the Indictment. The Prosecution has, it is true, pointed out that it was during the meeting of the Vorstand held on 8 November 1939, according to Prosecution Exhibit 2120, Section 3 that the resolution of the Commercial Committee to establish a cover company (Auffangsgesellschaft) for the Boruta factory was announced. But Prosecution Exhibit 2120 itself shows that there was no connection between Dr. Wurster's trip and the foundation of the cover company for the Boruta; for the resolution of the Commercial Committee which, according to Prosecution Exhibit 2120, was announced to the Vorstand on 8 November 1939, had been adopted as early as 20 October 1939, that is, several days before Dr. Wurster's departure

for Poland.

(Prosecution Document NI-5947, Prosecution Exh. 1133, Prosecution Document Book ~~IV~~^{LV}, r. 32 of the English, p. 47 of the German)

(Statement by Schwab, p. 6066-67 of the English Court Transcript, p. 6124 of the German,)

(Statement by Dr. Wurster, p. 11 125 of the English Court Transcript, p. 11365 of the German).

- e) The witness Schwab who was trustee of the Polish factories mentioned in the Indictment, has testified

(p. 6115-16 of the English Court Transcript, p. 6171/72 of the German), that he never discussed the Polish Chemical Industry with Dr. Wurster, that he never corresponded or communicated with him in any way on the subject.

Appendix to Section A.

No Apparatus was sent to Ludwigshafen from Poland.

In some of the documents submitted by the Prosecution in connection with pillage and spoliation in Poland, the Ludwigshafen-Oppau works are quoted as the alleged destination of two small pieces of chemical apparatus from Poland. Dr. Wurster's name is not mentioned in this connection. The apparatus concerned was equipment for use in organic Chemistry, a subject which did not fall within Dr. Wurster's sphere of responsibility at Ludwigshafen-Oppau

plan
(c.f. Chart showing Organizational Breakdown, Document W 3, Exhibit W 2, Document Book W I, p. 25).

Nevertheless, by way of precaution, let us recapitulate the facts revealed by the evidence on the subject as follows:

- a) The witness Szpilfogel believed that a piece of apparatus from his factory, Wola, "had been sent to Ludwigshafen or Hoechst".

(Statement by Szpilfogel, p. 2659-60 of the English Court Transcript, p. 2558 of the German).

In point of fact, the final destination of this piece of apparatus was not Ludwigshafen but Offenbach.

(Statement by Schwab, p. 6097-98 of the English Court Transcript, p. 6151-6154 of the German,
Statement by Dr. ter Meer, p. 13 152 of the English Court Transcript, p. 13 439-40 of the German,
Statement by Hagenboecker contained in Jaehne Document No. 48, Jaehne Document Book III, p. 19,
Statement by Jaehne, p. 9923-24 of the English Court Transcript, p. 10 059 of the German).

- b) In addition, a piece of apparatus is said to have been transported from the Winnica to Ludwigshafen. The facts of the case as revealed by Prosecution documents:

NI-8397, Prosecution Exhibit 1153, Prosecution Document Book LVI, p. 15 and
NI-8400, Prosecution Exhibit 1161, Prosecution Document Book LVI, p. 29

are that a certain Dr. Beumann of the Intermediates Department at Ludwigshafen, who had died in the meantime, was interested in the apparatus. According to the evidence submitted, however, one must accept at the outset the fact that this apparatus never reached Ludwigshafen.

(Statement by Dr. ter Meer, p. 13 150 of the English Court Transcript, p. 13 438 of the German).

Section B

Diedenhofen Oxygen Plant (Lorraine)

Dr. Wurster's name is mentioned in some few of the documents submitted by the Prosecution with reference to Count II of the Indictment. *regarding the Diedenhofen Oxygen Plant*

The affair of the Diedenhofen oxygen plant as such is dealt with in the Trial Brief submitted by Dr. Pribilla, attorney, for Jaehne, who *the technical side of* represented I.G. S. oxygen interests on the Vorstand

(c.f. Statement by Jaehne, p. 9924 of the English Court Transcript, p. 10 060 of the German).

Dr. Wurster's name is mentioned in the following documents:

Document NI-15105, Prosecution Exhibit 2119
Document NI-8165, Prosecution Exhibit 1221, Prosecution Document Book LXI, p. 36,
Document NI-8164, Prosecution Exhibit 1222, Prosecution Document Book LXI, p. 38.

In connection with Dr. Wurster's contribution to this affair, Counsel for his Defense has submitted

Document W 311, Exhibit W 85, Doc. Book W II, p. 89;

furthermore, Dr. Wurster spoke ^{on} this subject in the witness box, *11093 11113 11382 11363*
(p. 10967 ^{of} the English Court Transcript, p. 11129 ^{of} the German).

The evidence submitted in this connection ^{on} ~~on the character of~~ Dr. Wurster, ^{sharp in} ~~as revealed by~~ this affair, establishes the following:

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- 1) In none of the documents in which Dr. Wurster's name is mentioned is there even the slightest suggestion that the Vereinigte Sauerstoffwerke (VSW) or the I.G. or any other German company planned or wished at ~~that~~ ^{any} time to acquire ownership rights on the Sauerstoffwerk Diedenhofen property.
- 2) In the documents in which Dr. Wurster's name appears, all that is mentioned on the subject is the possibility of leasing the Diedenhofen oxygen plant to the Vereinigte Sauerstoffwerke. In accordance with German law, a lease agreement in no way implies that the lessee of the property which forms the subject of the lease acquires ownership rights on the property, and in no way curtails the rights of the owner on his own property. By virtue of this fact alone, then, any question of criminal action in this matter is eliminated. ^{*)} For the rest, the documents do not prove that the aim of Dr. Wurster's action in this matter was to assist in the conclusion of a lease agreement; the documents rather show that he merely wished to help in a very minor capacity, in finding a technically practicable method by which the oxygen requirements of Lorraine could be covered. That this was the case will be demonstrated in detail in the following.
- 3) The first paragraph of Prosecution Exhibit No. 2119 (Memorandum dated 8 October 1940, written by Director Kalbfleisch of the Vereinigte Sauerstoffwerke on the subject of a discussion with the Chief of Civilian Administration in Metz) states that Dr. Wurster "established contact with Gauleiter Buerckel some time ago in connection with the oxygen works in Lorraine". Neither this document nor any other reveals Dr. Wurster's intention in establishing contact with Gauleiter Buerckel. Judging from the content of the documents, however, it is improbable that this exchange of opinions with Gauleiter Buerckel had any connection

^{*)} Even if Prosecution Exhibit 1221 states that a certain Dr. Gmelch opposed the conclusion of a lease agreement on the grounds that lease agreements predetermined the conditions of ownership, to anyone who is familiar with German law, the statement is pure nonsense; this statement of Dr. Gmelch can, in any case, be explained by the fact that he was thinking of the possibility of the right of preemption in connection with the lease agreement; such right of preemption is by no means a necessary part of a lease agreement in accordance with German law; and there is no mention of any right of preemption in any of the documents in which Dr. Wurster's name appears.

whatsoever with the possibility of concluding a lease agreement, for oxygen of/
Director Ludwigs, the Sales Director for the I.G., Frankfurt on Main,
writes to Dr. Wurster in a letter dated 27 December 1940 (Prosecution
Exhibit No. 1221):

By virtue of
"Having taken part in the conference held at the headquarters of
the Chief of Civil Administration in Metz on 8 October, you
(Dr. Wurster) ~~are already acquainted with the matter under dis-~~
cussion." *(have gained knowledge of)*

If, as is stated here, Dr. Wurster first heard of the matter in the
course of the conference of 8 October (Prosecution Exhibit 2119), his
discussion with Gauleiter Buerckel before 8 October must have been on
a subject other than the lease agreement, probably some technical problem.

- 4) In the above-mentioned document, Prosecution Exhibit No. 2119 (Memo-
randum on the conference held in Metz on 8 October 1940), Dr. Wurster is
included in the list of participants in the conference. The fact that
Dr. Wurster was present during this conference, was, to judge by the
contents of the document, a mere coincidence. Herr Kelbfleisch writes
on page 6 of the original:

"Director Dr. Wurster who dealt with other problems affecting the
I.G. during the conference" (The underlining is ours)

The fact that Dr. Wurster was present at this conference on 8 October mere-
ly by chance is apparent from Dr. Decker's statement contained in Docu-
ment W 311, Exhibit W 85, Document Book W II, p. 89,

no partner
("I am absolutely positive that Dr. Wurster was ~~not one of the active~~
~~parties~~ in these negotiations.") and, furthermore, from the state-
ment made by Dr. Wurster himself,

11332, 11363
p. 10 968 of the English Court Transcript, p. 11 130 of the German.

Of the part taken by Dr. Wurster in the conference held on 8 October,

it is merely stated on page 6 of the original of the lengthy Prosecution
Exhibit 2119 that Dr. Wurster "gave valuable support to the suggestions
made by the representatives of the Vereinigte Sauerstoffwerke." These
suggestions of the representatives of the Vereinigte Sauerstoffwerke
obviously did not express any desire on the part of
the Vereinigte Sauerstoffwerke to purchase property in Lorraine but, on
the contrary, a desire to build an additional oxygen plant in Dieden-
hofen in the interests of the Lorrainian economy and for the purpose
of covering its oxygen requirements, using its own material for this
purpose, and to send oxygen cylinders to Diedenhofen. The

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2 representatives of the Vereinigte Sauerstoffwerke speak of the necessity for ^{rapid} "and increase in production capacity" and of the "pressing need to build another oxygen plant as quickly as possible."

5) In his letter of 27 December 1940 (Prosecution Exhibit 1221), Dir. Ludwigs, the Sales Director for oxygen for the I.G. in Frankfurt requested Dr. Wurster "to support the efforts of the Vereinigte Sauerstoffwerke as set forth in the second paragraph of the circular letter of ^{1/5W. of} 23 December." This circular letter which was enclosed with the letter of 27 December 1940 was not submitted in Court by the Prosecution;

despite every effort, the Defense did not succeed in discovering it. It is therefore not clear ^{in sense} ~~to what efforts on the part of the Vereinigte~~

~~Sauerstoffwerke~~ Dr. Wurster was to give his support ^{to the efforts on the part of the Vereinigte Sauerstoffwerke.}

It can be seen from the letter of 13 January 1941 from the Chief of Civil Administration in Lorraine to Dr. Wurster (Prosecution Exhibit 1222) that Dr. Wurster apparently wrote on 28 December 1940 to this office of which Gauleiter Buerckel was the Chief. The letter of 28 December 1940 from Dr. Wurster was not submitted to the Court by the Prosecution either, and despite all its efforts, the Defense was unable to find it. It is most probable that Dr. Wurster's letter of 28 December 1940 dealt merely with the technical problem of whether the new oxygen ^{additional} plant to be erected could ^{best} ~~most profitably~~ be built at Diedenhofen or in some other place, a fact which is apparent from the following:

In Prosecution Exhibit 1221, Director Ludwigs writes to Dr. Wurster that the conclusion of a lease agreement was desirable "in the interests of ensuring adequate supplies to meet the ever-increasing oxygen requirements of industrial consumers in Lorraine. At the foot of page 1 of the same document it is stated that failure to conclude a lease agreement would involve the question of selecting "another site for the oxygen plant which it is at present planned to establish at Diedenhofen." (The underlining is ours) In Prosecution Exhibit 1222, the Chief of Civil Administration writes to Dr. Wurster that "in the meantime, the Vereinigte Sauerstoffwerke have been granted permission for the leasing of the Diedenhofen Sauerstoffwerke ^{15. 243/84 731} and thus the oxygen plant which it is planned to establish at Diedenhofen is ensured." (The underlining is ours.) The passage underlined in Prosecution Exhibit 1222

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taken in conjunction with the passage underlined in Prosecution Exhibit 1221 makes it abundantly clear that Dr. Wurster's letter of 28 December which was not submitted by the Prosecution, in which he gave his support, in accordance with the wishes of Herr Ludwigs (Prosecution Exhibit 1221) to the efforts of the Vereinigte Sauerstoffwerke as described in its letter of 23 December, which was equally not submitted by the Prosecution, concerned the technical question mentioned above.

- 6) Apart from this, Dr. Wurster had nothing to do with and no further information on the matter.

(Statement by Dr. Wurster, p. 10 969 of the English Court Transcript, p. 11 132 of the German).

- 7) It must be stated, by way of summing up, that in this matter, Dr. Wurster took no part in any encroachment on foreign property in an occupied country.

(c.f. the statement contained on p. 10 969 of the English Court Transcript, p. 11 132 of the German.)

This is emphasized by the fact that, according to the statement made by Dr. Decker in

Document W 311, Exhibit W 85, Document Book " II, p. 89 (par.4) the purpose of Dr. Wurster's journey to Metz on 8 October 1940, was to convey to the offices of the Gauleiter the I.G.'s opposition to the acquisition of another factory in Lorraine as desired by the Gauleiter.

Part III

Slave Labor (Count III of the Indictment)

Section A

Dr. Wurster's Responsibility for Labor during the War (Ludwigshafen-Opau only).

In Section 120 of the Indictment, the defendants ^{are} charged with war crimes and crimes against humanity in connection with the following groups of persons:

- a) Members of the civilian populations of occupied areas, who were allegedly "enslaved and deported for forced labor",
- b) Inmates of concentration camps, including German nationals,
- c) Prisoners of war.

These war crimes and crimes against humanity are supposed to have been committed by the defendants, according to Section 120 of the Indictment, in the course of the implementation of the forced labor program of the Third Reich.

Counsel for the Defense of Dr. Wurster proposes to refrain from entering in detail into the subject of the slave labor program of the Third Reich and of the assertions made on the subject in the Indictment, for even if the assertions contained in the Indictment on the slave labor program of the Third Reich were entirely correct, Dr. Wurster could never be considered co-responsible for and therefore guilty in connection with this program.

In order to ^{show this} ~~prove such guilt~~, it would first be necessary to ascertain the extent of responsibility, if any, which Dr. Wurster had in the sphere of manpower control during the war. Of this matter, the following information brought to light during the presentation of evidence, should be stated:

1) Firstly, it is clear that Dr. Wurster had nothing whatsoever to do with the planning, formulation and execution of the slave labor program as such. None of the positions which Dr. Wurster held (c.f. Part I, I) controlled the recruitment and procurement or the allocation of so-called slave labor.

- 2) In his capacity as Betriebsfuehrer of the Ludwigshafen-Oppau works, a post which he held throughout the second World War, Dr. Wurster had certain responsibilities in connection with the manpower problem; Dr. Wurster has accepted full responsibility for all actions within his sphere of work,

(p. 10 914 of the English Court Transcript, p. 11 071 of the German).

In Document W 304, Exhibit W 30, Document Book "I, p. 29, par.4, he stated that he looked upon his work as Betriebsfuehrer for questions of Social Welfare in the Ludwigshafen-Oppau works during the second World War as his most important task.

- 3) It would be a mistake to hold Dr. Wurster co-responsible for actions which the Prosecution has included under this Count elsewhere. The principle of the independence and sole ~~liability~~ ^{responsibility} of the individual executives which governed the organization of the I.G. applies to an even greater extent in the field of social welfare, more especially as in this sphere, the law governing the control of nations ~~later~~ imposed upon the Betriebsfuehrer of a works a particular personal responsibility towards the State and as the responsibility of the Betriebsfuehrer in the sphere of social welfare, particularly during the difficult years of war and of air attack in a works employing more than 30,000 persons, as was the case of the Ludwigshafen-Oppau works which was particularly vulnerable to air attack, made ceaseless demands on the individual concerned. Just as Dr. Wurster cannot impute to other executives of the I.G. co-responsibility for anything done in the sphere of social welfare under his management in the Ludwigshafen-Oppau works, so, conversely, no co-responsibility can be imputed to him for happenings outside his own sphere of responsibility, taking place in works which, for the most part, he had never even seen

(ref. Auschwitz, c.f. p. 11 060 of the English Court Transcript, o. 11 267 of the German)

and over which he had not the slightest influence (c.f. in this connection the general statements contained in II and III of the introduction to this Trial Brief).

Defense Counsel for Dr. Wurster therefore proposes to limit himself, in the following remarks on Dr. Wurster's alleged participation in the so-called slave labor program, to the Ludwigshafen-Oppau works which operated under Dr. Wurster's management.

This examination of evidence will be conducted as follows:

- Section B: Refusal of the Ludwigshafen-Oppau works to employ concentration camp inmates,
- Section C: Foreign labor,
- Section D: Prisoners of war,
- Section E: Dr. Wurster as Betriebsfuhrer.

Section B

Refusal of the Ludwigshafen-Oppau works to employ concentration camp inmates.

At no time were concentration camp inmates employed in the Ludwigshafen-Oppau works. On two occasions, the authorities attempted to detail concentration camp prisoners to the Ludwigshafen-Oppau works. By dint of intense efforts, however, Dr. Wurster and his experts succeeded in preventing the allocation of ^{such} prisoners. Evidence:

Document W 570, Exhibit W 98, Document Book I, III, p. 27;
Document W 296, Exhibit W 99, Document Book I, III, p. 28,
Document W 247, Exhibit W 100, Document Book I, III, p. 30.

Section C

Foreign Labor.

I. Proof that by far the majority of the foreigners employed at Ludwigshafen-Oppau were employed on a voluntary basis.

It is correct that during the second World War, foreign workers were employed in the Ludwigshafen-Oppau works, a fact which is true of practically every German factory and every German farm. It is, however, a radical error on the part of the Prosecution, to accept as their starting point the fact that all these foreign workers were slave workers, that is to say workers employed on a compulsory basis.

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- 1) The Defense Counsel for Dr. Wurster proved by the following facts that this assertion of the Prosecution is incorrect:
-

- a) Long before the second World War, the Ludwigshafen-Opau Works already employed entirely voluntary foreign workers, and some of these workers even continued to work at the plant during the second World War. Evidence:

Doc. W 292, Exh. W 181, Doc. Book W IV A, p. 19,
Doc. W 270, Exh. W 183, Doc. Book W IV A, p. 23,
Testimony Dr. Wurster, English Transcript, p. 10, 972,
German Transcript, p. 11, 134.

- b) The Defense Counsel for Dr. Wurster presented contemporary documents, which prove that foreign workers during World War II applied specially for employment with the I.G. Works Ludwigshafen-Opau. Evidence:

Doc. W 513, Exh. W 86, Doc. Book W III, p. 1,
Doc. W 512, Exh. W 87, Doc. Book W III, p. 2.

- c) The Defense Counsel for Dr. Wurster presented affidavits by foreign nationals, in which they stated that they came as voluntary workers to the I.G. Works Ludwigshafen-Opau. Evidence:

Testimony of the Yugoslav national Ivan Bodovic,
Doc. W 106, Exh. W 178, Doc. Book W IV A, p. 10.

- d) A letter of the Ludwigshafen-Opau Works, dated 24 September 1941,
Doc. W 510, Exh. W 92, Doc. Book III, p. 11

concerning the allocation of labor from Northern France reads:

workers having broken their contracts
"We do not consider a forced return of ~~defectors~~ to our local plant a useful move to make, as we know from experience that no satisfactory work can be turned out by our plant with such workers."

(Our emphasis)

- e) The Defense presented a circular of the Ludwigshafen Personnel Department, dated 10 June 1942,

(Doc. W 515, Exh. W 97, Doc. Book W III, p. 21)

where the following sentence is to be found

"In connection with the assignment of foreigners, it is our most important duty to recognize persons who are obviously reluctant to work or the elements which undermine discipline and to return them to their homes as quickly as possible."

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(Our emphasis)

This circular proves unequivocally that there was definitely no forced labor used in the Ludwigshafen-Oppau Works before 10 June 1942; even if a foreigner who had come to Germany involuntarily was assigned to the Ludwigshafen-Oppau Works at that time, he would have learned of this practice of the works from his co-workers very soon and if he had taken appropriate steps he would have been "sent home by the quickest possible route".

Doc. W 569, Exh. W 150, Doc. Book W IV, p. 57,

proves clearly that the Ludwigshafen-Oppau Works obviously adhered, ~~even~~ *even later as for* later, to this practice as is evident in circular Exh. W 97, ~~an~~ *example* at the beginning of 1944; Government decrees, however, thereafter prohibited the further discharge of people unwilling to work.

f) The chart

Doc. W 2, Exh. W 6, Doc. Book W I, p. 26

on which Dr. Wurster commented in detail on the witness stand

(English transcript, pp. 10972-78, German transcript pp. 11135-43),

in connection with

Doc. W 220, Exh. W 93, Doc. Book W III, p. 12

shows that, from June 1943 onwards, the number of foreign workers employed at Ludwigshafen-Oppau was constantly being reduced and that, from that time up to the end of the war, more than 8,000 foreigners had left the works. This, also, makes it appear most improbable that a large number of the foreigners employed in the Ludwigshafen-Oppau Works were non-voluntary workers. In this connection, it may be noted that this downward trend in the ~~assignment~~ *employment* of foreign workers ~~at~~ *at* the Ludwigshafen-Oppau Works begins at the very time (1943) when the German Government introduced the ~~work obligation~~ *labor conscription* in the occupied territories.

(Testimony Dr. Wurster, English Transcript, p. 10 978, German Transcript, p. 11142).

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From

Dr. Wurster's testimony (English Transcript, p. 10983,
German Transcript, pp. 11148/49)

in connection with Prosecution Exhibit 1344, it further appears that, in fall 1943, the Ludwigshafen-Oppau Works pointed out to the authorities that its "foreign workers, when their contracts expired, would return in large numbers to their homes". The works then requested in this connection the allocation of German workers. (It may be of interest that the Prosecution did not submit the corresponding "supplementary notes" of the Ludwigshafen Works mentioned in Prosecution Exhibit 1344)!

g) Dr. Wurster stated on the witness stand that the majority of the foreigners employed in Ludwigshafen-Oppau came to Ludwigshafen as volunteers.

(English Transcript, pp. 10976-78 and 11202,
German Transcript, pp. 11141-43 and 11371).

He confirmed in particular that the Russian workers also who had been assigned to the works in 1942 came as volunteers to Germany, and that after 1942 no more Russian workers were assigned to the Ludwigshafen Oppau Works.

(English Transcript, p. 10985, German Transcript
pp. 11150-51).

Polish workers who had been drafted for work in Germany by the German authorities at a comparatively early date during the war were never assigned to the Ludwigshafen-Oppau Works.

(Testimony Dr. Wurster, English Transcript, p. 10973,
German Transcript, p. 11137).

2) Comments on the various Prosecution Documents concerning the
Assignment of Foreign Workers to Ludwigshafen-Oppau.

All the exhibits mentioned under 1) show unequivocally that it is definitely wrong to consider all, or even only a substantial part, of the foreign workers of the Ludwigshafen-Oppau Works as non-voluntary workers.

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Therefore all documents submitted by the Prosecution which merely mention the employment of foreign labor in Ludwigshafen-Oppau, but do not indicate the non-voluntary status of these workers, lose all their evidential value. This is particularly the case with the following Prosecution Documents:

Doc. NI - 6285, Prosecution Exh. 1335, Prosecution
Doc. Book LXIX, English text, p. 21, German text, p. 25,

("Additional assignment of about 1,800 foreign workers".)

Doc. NI-6287, Prosecution Exh. 1336, Prosecution
Doc. Book LXIX, English text, p. 25, German text, p. 32,

(and testimony Dr. Wurster, English Transcript, pp.
10974-75, German Transcript, pp. 11138-39),

Doc. NI-9369, Prosecution Exh. 1337, Prosecution Doc.
Book LXIX, English text, p. 30, German text, p. 41,

Doc. NI-6308, Prosecution Exh. 1338, Prosecution Doc.
Book LXIX, English text, p. 33, German text, p. 45,

Doc. NI - 5916, Prosecution Exh. 1341, Prosecution Doc.
Book LXIX, English text, p. 41, German text, p. 58,

Doc. NI- 9092, Prosecution Exh. 1345, Prosecution Doc.
Book LXIX, English text, p. 62, German text, p. 79,

Doc. NI - 14031, Prosecution Exh. 2118.

In reference to the last mentioned Prosecution Exhibit 2118 the Defense further states that for another reason also the document has no evidential value, because it does not show the name of the signatory and is not dated. (This shortcoming of the document was not corrected by document NI-15289, Prosecution Exhibit 2256, which was presented by the Prosecution as additional evidence). Judging from its outward appearance, it cannot be a document which originated with the I.G.

(cf. testimony Dr. Wurster, English Transcript, p. 11126,
German transcript, p. 11367).

From the information contained in the document "Duration of Work from 15 April 1942 until 30 April 1943", it appears that this document dates back to a time prior to 15 April 1942. This document therefore is older than the exhibit W 97 (dated 10 June 1942) mentioned under 2c) (Page 46) and consequently definitely does not refer to non-voluntary workers from Holland assigned to the Ludwigshafen-Oppau Works.

The Prosecution submitted only three documents which might be interpreted as an indication that the foreigners employed in Ludwigshafen-Oppau were non-voluntary workers.

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- a) NI-5915, Prosecution Exh. 1342, Prosecution Doc. Book LXIX, English text, p. 52, German text, p. 70.

This document will be dealt with in detail further below under II 3e and III 5 (pp. 52 and 56).

- b) Document NI - 11635, Prosecution Doc. 2116.

This document is a letter of the Amsterdam Labor Office addressed to the Amsterdam Labor Allocation Control Service, but does not indicate any action taken by the Ludwigshafen-
Oppau Works. Dr. Wurster was therefore not able from his own knowledge to make any statements concerning this document in his testimony, English Transcript, pp. 11120-21, German Transcript, p. 11361.

- c) Document NI - 6311, Prosecution Exhibit 2117.

This document will be dealt with under II 3 d (p. 52).

- II) Dr. Wurster in his capacity as Betriebsfuehrer cannot be held criminally responsible ((state of necessity)) for any employment of non-voluntary workers.

From the explanations under II, it must be assumed that the overwhelming majority of the foreigners who were employed in Ludwigshafen during the war were voluntary workers. If, in individual cases, foreign workers who had been assigned to the Ludwigshafen Works by the official labor allocation agencies had been subjected to any pressure by the State, Dr. Wurster cannot be held responsible for this any more than any other German Betriebsfuehrer, in view of the totalitarian dictatorship exercised by the State, particularly in this field. Dr. Wurster mentioned in his testimony the totalitarian regimentation of the labor allocation by the State.

(English Transcript, pp. 10911-13, German Transcript, pp. 11069-70).*)

He stated that the recruitment of workers abroad especially was handled exclusively by the State.

(Testimony Dr. Wurster, English Transcript, p. 11202, German Transcript, p. 11371).

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- *) From the further testimony of Dr. Wurster,
(English Transcript, pp. 10981-82, German Transcript,
pp. 11146-47)
it can be seen that document HI - 2831, Prosecution
Exh. 1346, Prosecution Doc. Book LXIX, p. 66 also does
not contain any evidence to the contrary.
(Testimony under cross-examination English Transcript,
p. 11075, German Transcript, p. 11315).

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The state of necessity which in such circumstances applied to every Betriebsführer is dealt with in the Trial Brief submitted by the attorney, Dr. Helmut Dix.

As far as Dr. Wurster himself is concerned, the following facts are pointed out in this connection:

1) There was no possibility of rejecting allocated labor.

Doc. W 254, Exh. W 96, Doc. Book W III, p. 19, shows that, as early as the end of 1939, the total production of the Ludwigshafen-Oppau Works was in every instance fixed by order of governmental planning boards (staatliche Lenkungsstellen).

(Doc. W 145, Exh. W 95, Doc. Book W III, p. 17,

(Testimony of Eugen Minzenmay, the former manager of the Ludwigshafen Labor Office)

shows that the authorities would have regarded any rejection of foreign workers by the employer during the war as sabotage of the production order, i.e. sabotage against the Reich, and would have punished it accordingly.

2) The Ludwigshafen-Oppau Works did not initiate the assignment of forced labor.

The evidence of the Prosecution does not show a single instance in which the Ludwigshafen-Oppau Works had taken the initiative in restricting the freedom of foreigners. The evidence submitted by the Prosecution especially does not show a single case in which the Ludwigshafen-Oppau Works had taken the initiative in obtaining foreigners as non-voluntary workers or in retaining by force foreigners who desired to leave Ludwigshafen, or in restricting the freedom of foreigners employed in Ludwigshafen-Oppau.

3) Efforts made by the Ludwigshafen-Oppau Works to eliminate or alleviate the compulsion exercised by the State.

The documents of the Defense contain, on the other hand, numerous instances that the Ludwigshafen-Oppau Works had attempted, in some cases even by circumventing Government orders, to eliminate or to alleviate the compulsion exercised towards the foreigners by the State.

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- a) Ludwigshafen-Oppau always made the effort to obtain primarily German workers to fulfil the labor requirements for the government production orders

(Doc. W 241, Exh. W 94, Doc. Book W III, p.15)

- b) Ludwigshafen-Oppau refused to have foreigners who had broken their contracts brought back to their workshops by force.

(Doc. W 510, Exh. W 92, Doc. Book W III, p.11)

- c) Ludwigshafen-Oppau granted to foreigners a furlough to visit their homes, in addition to the furloughs regulated by the official directives.

(Doc. W 566, Exh. W 91, Doc. Book W III, p. 9)

- d) Ludwigshafen has in part circumvented and in part tried to mitigate the severe Government directives concerning the workers from the East.

(Doc. W 226; Exh. W 164; Doc. Book W IV, p.89.
Doc. W 511, Exh. W 168; Doc. Book W IV, p. 110
Doc. W 240, Exh. W 169, Doc. Book W IV, p.111).

Wurster Exhibit 168 (letter from the Geheime Staatspolizei, dated 26 August 1942) is obviously the document which led to the discussion at the conference of the directors in Ludwigshafen, on 1 September 1942, Prosecution Exh. 2117. The fact that this discussion was held with the intention to render ineffective the intervention by the Gestapo (Exh. W 168), is shown by the explanatory statement of Dr. Wurster, English transcript p.11 121-23, German transcript p. 11 362-63.

- e) The treatment of the two French workers Blanc and Sics mentioned in the Prosecution Exh. 1342, Pros. Doc. Book LXIX, Engl. p. 52, German p. 70 ~~may~~ be ascertained from the Documents of the Defense:

Doc. W 571, Exh. W 15, Doc. Book W IV, p.53,
Doc. W 572, Exh. W 16, Doc. Book W IV, p.54,
Doc. W 573, Exh. W 17, Doc. Book W IV, p.55,
Doc. W 312, Exh. W 18, Doc. Book W IV, p.56 ,

as well as the Statement of Dr. Wurster, Engl. transcript p.

11 003-04

German transcript p.11,169-71.

Briefly summarized, they show the following: -

Both Frenchmen were seized by the Gestapo when returning to France and brought back to the Ludwigshafen-Oppau Works.

Action had to be taken by the plant in accordance with the legal measures prescribed. They were fined and had to pay the equivalent of one (1) day's wages; the fine was more than compensated for by a rise in wages shortly thereafter. They were never sent to a correction camp. At that time and under the then prevailing system, no industrial plant could have handled the matter in a more decent and more humanitarian manner.

4) Dr. Wurster's personal attitude towards conscript labor.

Dr. Wurster was personally not aware of the extent of the compulsory system initiated by the German government; in particular, he knew nothing about the evil methods which were sometimes used for recruiting foreign workers.

(Statement by Dr. Wurster, English transcript p. 10 985,
German transcript p. 11 151.)

It is true, however, that he became aware of the fact that, during the latter part of the war, the State adopted forcible measures against foreign workers. It was beyond his power to prevent these things.

(Statement by Dr. Wurster, English transcript p. 10 978-79,
German transcript p. 11 144-45).

On account of his whole disposition, this development was very painful to Dr. Wurster and he consequently redoubled his efforts to make life as human as possible for the foreigners working in his plant.

(Statement of Dr. Wurster, English transcript p. 10 979 and 10 985,
German transcript p. 11 144 and 11 151.)

To what extent and in what way he was successful in this, is shown by the following points III and IV:

III. The treatment of the foreign workers within the limits of Dr. Wurster's competence was exemplary. Rebuttal of assertions to the contrary by the Prosecution.

The Prosecution assert under number 126 of the Indictment that "in all Farben plants and works where slave labor was used, sub-human standards of living were the established order"; it paints the terrible living conditions of the foreign workers in the plants of the I.G. in the blackest colors.

As far as the Ludwigshafen-Oppau Works are concerned, the Prosecution was not in the position to submit even the slightest proof for these assertions. The evidence submitted by Dr. Wurster's defense proves the exact opposite of the assertions made by the Prosecution; according to the evidence of the Defense, the foreign workers of the Ludwigshafen-Oppau works were so well taken care of that, during the war, the German Labor Front objected that the standard of living of these foreign workers was above that which was in general allowed to German workers and that the foreign workers of the Ludwigshafen-Oppau plant were downright pampered.

(Document W 160, Exh. W 103, Doc. Book W III, p. 55).

In the following statements on the treatment of foreign workers in Ludwigshafen-Oppau, the abuses asserted by the Prosecution under number 128 of the indictment are first dealt with under numbers 1-7 and in this connection also some other opinions are given.

1) "Inadequate food rations."
(Number 128 of the indictment).

As a proof of the incorrectness of this assertion, the Defense points to the documents submitted by them in Document Book W III:

Exh. W 113 - W 125, Doc. Book W III, p. 86-125.

These documents are so clear and convincing that any comment on them would be superfluous. In addition, the Defense points to the photographs of the feeding installations for foreign workers contained in the photo-album attached to

Doc. W 6, Exh. W 9, Doc. Book W III, p. 37, and, in addition, Exh. W 257), with particular reference the pictures Nos.: 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25 .

2) "Overcrowded and filthy sleeping-quarters".

As a proof of the incorrectness of this assertion, attention is drawn to:

Doc. W 14, Exh. W 110, Doc. Book W III, p. 82; which gives a statistical survey of the number of beds and population of the community camp in Ludwigshafen-Oppau in the period between the 1 January 1942 to 31 December 1944.

(See also Doc. W 17, Exh. W 111, Doc. Book W III, p. 83).

Attention is also directed to the following Document

Exh. W 107 - W 109 and W 112 in
Doc. Book W III, p. 67-81 and p. 84,

and to pictures Nos. 34, 37 and 38 in the photo-album.

(Supplement to Doc. W 6, Exh. W 9, and Exh. W 257).

These documents and pictures show that, ⁱⁿ accordance with the wish of Dr. Wurster, ^{the living,} sleeping and dining quarters of the foreign workers were made as attractive as was at all possible; this desire of Dr. Wurster's is also particularly clearly shown in the circular signed by himself.

Doc. W 524, Exh. W 131, Doc. Book W III, p. 138.

The exemplary sanitary installations for the foreign workers are shown by pictures 26-33 of the photo-album Exh. W 9.

3) "Excessive hours of long physical labor".

The documents of the Defense:

Doc. W 233; Exh. W 212, Doc. Book W V, p. 62,
Doc. W 538, Exh. W 153, Doc. Book W IV, p. 65

show that in principle the foreign workers had the same working hours during the war as had the German workers doing the same kind of labor. That this applied also to the Eastern workers, is shown by the statements under number 16 b) (page 61).

4) "Excessive ~~hours~~ of hard physical labor".

(or "overworking" as it is called in the Trial-Brief of the Prosecution).

The incorrectness of this assertion of the Prosecution can be seen from

Doc. W 538; Exh. W 153, Doc. Book W IV, p. 65,
and Doc. W 125, Exh. W 177, Doc. Book W IV A, p. 7.

In the last Document, a Frenchman confirms that the foreign workers carried out together with German workers the same kinds of work as the latter.

5) "Continuous beatings and other cruel disciplinary measures."

Despite the large number of foreign workers employed in Ludwigs-hafen-Oppau, the Prosecution had not been able to show a single case in which a beating had even once been administered.

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It has also not been able to prove any other kind of illtreatment whatsoever in the Ludwigshafen-Opau plant. The testimony of the Prosecution witness GRENOT may here be disregarded, for reasons which are explained in Section D, "Prisoners of war", (page 69. in connection with Supplement B to this Trial Brief).

The statements of three French witnesses, contained in Exhibit W 175-W 178, Doc. Book W IV A., p. 1-9, prove that in the Ludwigshafen-Opau Works no beatings were administered to foreign workers, and that no ill-treatment ever occurred there.

As evidence of the alleged "Cruel disciplinary measures", the Prosecution submitted the following documents, which were completely disproved by the Defense:

- a) Prosecution Exh. 1340, NI - 6349, Pros. Doc. Book LXIX, p. 38
~~Together with testimony of Dr. Wurster, Engl. transcript p. 11 009,~~
5cc German transcript p. 11 175.
- b) Prosecution Exh. 1346, NI - 2831, Pros. Doc. Book LXIX, p. 66
(Circular dated 23 Febr. 1945) and in addition, the testimony of Dr. Wurster, English transcript p. 11 010;
German transcript p. 11 176.
- c) Prosecution Exh. 1342, NI - 5915, Pros. Doc. Book LXIX, p. 52.

The Defense is of the opinion that the term "Cruel Disciplinary Measure" cannot be applied to the infliction of a fine amounting to a day's wages, which was, moreover, compensated within a very short time by a rise in salary, as already explained under III 3 c.

The Department of Correction mentioned in Exh. 1342 of the Prosecution to which, however, the Frenchmen named therein were never sent, consisted only of a single hutment and existed only for a few months. The purpose of this installation was not to carry

out "cruel disciplinary measures" against foreigners, but, on the contrary, to save the foreigners, who were ~~ordered~~ by the Gestapo to be punished, from the measures which awaited them if they had been left by the works entirely and uncontrollably in the hands of the Gestapo. *being separated from the works*

Testimony of Dr. Wurster, Engl. transcript p. 11 005- 11 009;
p. 11 073- 11 074;
German transcript p. 11 171- 11 175;
p. 11 312- 11 314,

Doc. W 224, Exh. W 151, Doc. Book W IV, p. 59.

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After the collapse, the French Occupation Force investigated the conditions in this respect and the Court Martial ended with an acquittal.

Exh. W 151, Paragraph 9 in connection with
Exh. W 152, Doc. Book W IV, p. 63.

6) "High Rate of Sickness".

The opposite is proved by the documents:

Exh. W 139 - W 141, Doc. Book W IV, p. 15-21, as well as by the testimony of Dr. Hurster, English transcript p. 11 001, German transcript p. 11 167.

7) "In cases of sickness there was little or no medical treatment at all, so that many slave-workers died."

This assertion of the Prosecution is disproved through the Defense Documents:

Exh. W 138, Doc. Book W IV, p. 1,
Exh. W 142-145, Doc. Book W IV, p. 22-33, and through the
Exh. W 175, Doc. Book W IV, p. 1,
already mentioned.

These documents show that the medical care and looking after of the foreign workers in Ludwigshafen-Oppau was not only very good, but was even exemplary. In this connection, pictures No. 43-53 in the photo-album Exh. W 9 are referred to (also Exh. W 257).

8) "Children worked, but given no schooling".

In the Trial Brief of the Prosecution, part III, par. II, No. 33 there is a passage saying "children of tender years from the families of the slave laborers were worked but given no opportunity for schooling."

The Prosecution has submitted no evidence to show that in the Ludwigshafen-Oppau plant the "children of slaves" had to work. The evidence of the Defense shows that the children of the foreign workers, and mostly they were children of Eastern workers, were taken care of in nurseries and kindergartens and that there were schools set up for the older children. The two daughters of Dr. Hurster themselves helped in one of these kindergartens.

Proof:

Doc. W 246, Exh. W 104, Doc. Book W III, p. 57, also photographs Nos. 66-74 in photo-album Exh. W 9 (Further Exh. W 257).

9) "Barbed Wire, Guarding"

In the Trial-Brief of the Prosecution, it is asserted that the foreign workers were obliged either to live behind barbed wire or to be constantly under the observation of the Security Guard of the works. This assertion of the Prosecution is also not supported by any evidence. The Defense document

Doc. W 125, Exh. W 177, Doc. Book W IV A, p. 7,

shows that the foreign workers were guarded neither in the works nor in their free time; the affiant of Affidavit Exh. W 177 lived in the town privately for four years. Compare photograph No. 8 in Exh. W 9 (Fencing of a community camp).

The disregard of the regulations concerning the guarding of the Eastern workers in Ludwigshafen-Opau is evident from the indications given in II 3 d (page 52).

10.) Clothing of the Foreign Workers.

The Defense documents

Exh. W 126 - W 131, Doc. Book W III, pp. 126-140

show the unbounded consideration of the Ludwigshafen-Opau Works in this regard also for those foreign workers, who, having for many years suffered from want in their own country, arrived in Ludwigshafen only very scantily clad.

(Doc. W 106, Exh. W 178, Doc. Book W IV A, p.10).

Compare in this connection also pictures Nos. 56-59 in Photo Album Exh. W 9.

11. Payment of Foreign Workers!

From one passage in the Trial-Brief of the Prosecution, one might gain the impression that the Prosecution imagined that the foreign workers in Germany during the war were not even paid, as may have been the case with the slaves in ancient Rome. In the first place, the contract between the I.G. Works, Ludwigshafen, and a French contractor firm shows that the foreign workers of the Ludwigshafen-Opau Works were not only paid normally, like every German worker, but that it was desired to create specially favourable payment conditions for them.

Doc. W 568, Exh. W 88, Doc. Book W III, p. 3.

The same is evident from the documents

Exh. W 132 - W 137 in Doc. Book W III, pp. 141-153.

That the foreign workers were insured against sickness in the Works Sick Fund, like every German worker, is shown by

Doc. W 218, Exh. W 139, Doc. Book W IV, p. 15;

and that they were insured against accidents in the so-called Trades Association (Berufsgenossenschaft), is evident from

Doc. W 230, Exh. W 206, Doc. Book W V, p. 39.

It was not the Works that benefited by the insurance against illness or accident of the foreign workers, but themselves or their families.

(Testimony Dr. Wurster Engl. Transcript pp. 11,204-06

German Transcript pp. 11,373-75

Also Doc. W 234, Exh. W 157, Doc. Book W IV, p. 75).

Contrary to the idea of the Prosecution, therefore, the foreign workers were undoubtedly, ^{legal personalities} ~~subject to the protection of the law~~, that is to say, they had legal rights.

12.) Religious Welfare Work.

Compare in this connection

Doc. W 114, Exh. W 146, Doc. Book W IV, p. 34

and the pictures Nos. 75, 76, 77 in Photo Album Exh. W 9.

13. Measures for the Promotion of Language Understanding between Foreigners and Germans.

Compare in this connection

Doc. W 293, Exh. W 14, Doc. Book W IV, p. 37 and

Doc. W 10, Exh. W 13, Doc. Book W IV, p. 40.

14. Recreational Facilities for Foreign Workers.

The Defense has submitted comprehensive evidence to show that the solicitude of Dr. Wurster also extended to the spiritual welfare of the foreign workers and to their cultural care. Compare in this connection

Exh. W 147, 148, 11, 149, 12 in Doc. Book W IV, pp. 41-52b.

Above all, the Annual Report, Exh. W 11, which mentions 340 (!) performances for the foreign workers for the year 1943, speaks a language which needs no explanation. The pictures Nos. 78-101 in Photo Album Exh. W 9 (with Exh. W 257) serve as illustration for this.

15. Work Protection for Foreign Workers.

In this connection, reference is made to documents

Exh. W 153 - W 157 in Doc. Book W IV, pp. 65-76.

Especially noteworthy is the introduction to Exh. W 155, composed by Dr. Wurster himself, which was printed in a number of foreign languages for the use of the foreign workers in the I.G. Works, Ludwigshafen-Opau.

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(See Testimony Dr. Wurster Engl. Transcript p. 11,002
German Transcript p. 11,168).

16.) Treatment and Care of the Eastern Workers in particular.

A) The Eastern workers occupy to a certain extent a special place among the foreign workers. It is true that the Eastern workers who in 1942 were assigned to the Ludwigshafen-Oppau Works came voluntarily,

(Testimony Dr. Wurster, Engl. Transcript p. 10,985
German Transcript pp. 11,150-51),

but the promises which were made to them in their homeland by the representatives of the German State were not kept and this same State decreed for the Eastern workers who came to Germany specially restrictive and hard regulations. It is an indication of the character of Dr. Wurster that, in this state of affairs, he doubled and redoubled his efforts to do everything possible for these people that could be done for them in such a situation,

(Testimony Dr. Wurster, Engl. Transcript p. 10,985
German Transcript p. 11,151).

In what manner Dr. Wurster cared for the Eastern workers, with what skill, with what energy and with what courage, is shown by the documents

Exh. W 161 - W 174 and Exh. W 10
in Doc. Book W IV, pp. 86-134.

In October 1942, Dr. Wurster appointed a special commission^{er} for the Eastern workers,

(Exh. W 162) whose report is to be found in
Exh. W 164.
Exh. W 163 shows

that the Eastern workers were now, "next to our original German personnel, considered as being among our best workers". Whereas the Prosecution in the Trial-Brief asserts that the work performance of the Eastern workers, as a consequence of their treatment, constantly declined, Exh. W 163 proves that the Eastern workers of the Ludwigshafen-Oppau Works, in consequence of their excellent treatment, had developed an attachment to their work and thereby had become some of the best workers in this plant.

b) The various Prosecution documents, which are supposed, to show the alleged bad treatment of the Eastern workers, are all explained by the fact that an industrial works would, of course, not dare to let it be seen from the outside that it was not keeping the sharp regulations of the Government, with regard to the assignment of Eastern workers and this therefore often gave rise to facade-documents.*) With regard to Prosecution Exh. 2117, this has already been proved under II 3 d (page 52).

The same applies to

(Doc. NI-6315, Prosecution Exh. 1339, Prosecution Book LXIX, p. 36,

which has obviously been submitted as proof of the specially hard treatment of the Eastern workers. The Defense documents,

Exh. W 158 - W 160 in Document Book W IV, pp. 77-85,

in connection with the

Testimony Dr. Wurster, Engl. Transcript p. 10,988

German Transcript p. 11,154,

prove that, behind the facade even of this document, there was concealed an obstinate fight by the Ludwigshafen-Opau Works for the amelioration of the lot of the Eastern workers. Obviously, the Opau circular of 21 Aug. 1943

Doc. NI-6349, Prosecution Exh. 1340, Prosecution Doc. Book LXIX, p. 38,

on the subject of the Government "Order" to work the Eastern workers 67 hours, under the threat otherwise of a reduction of workers by the Government, is also a facade document. That the foreigners had in fact the same working hours as the Germans is shown by

Exh. W 212, Doc. Book W V, p. 62,

Exh. W 153, Doc. Book W IV, p. 67,

Statement Dr. Wurster on Prosecution Exh. 1340,

English Transcript p. 11,009

German Transcript p. 11,175.

c) In conclusion, may it be permitted to draw the special attention of the Court to Exh. W 10, Doc. Book W IV, p. 124, the newspaper of the Eastern Workers' Camp of the I.G.

*) Testimony Dr. Wurster, English Transcript p. 10,982

German Transcript p. 11,147:

"Documents from this time have to be read differently than they do to-day."

Ludwigshafen of the spring of 1944. This document alone would, in the opinion of the Defense, be sufficient to prove the spirit of genuine and warm humanity that prevailed in Ludwigshafen-Opau, also in the treatment of the Eastern workers.

Pictures 16, 37, 38, 50, 53, 57, 58, 59, 61, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 80, 81, 82, 86, and 89 in Photo Album Exh. W 9,

especially illustrate the life of the Eastern workers in Ludwigshafen.

IV. The Verdict of the Foreign Workers on the Treatment they were given in Ludwigshafen-Opau.

1.) There were many thousands of workers in the Ludwigshafen Works up to the moment of the Occupation.

(Doc. W. 2, Exh. W 6, Doc. Book W I, p. 26).

A large number of these still remained for a considerable time after the Occupation in DP camps in the vicinity of the Works. If the assertions of the Prosecution regarding the treatment of the foreigners in Ludwigshafen-Opau were correct, there would surely have arisen a "wave of hatred" against Dr. Wurster.

(Testimony Dr. Wurster, English Transcript p. 11,057
German Transcript p. 11,262).

As a matter of fact, Dr. Wurster still remained for more than two years after the occupation of Ludwigshafen as the responsible manager of the works, and no voice and no hand was raised against him.

(Testimony Dr. Wurster, English Transcript p. 11,011
German Transcript p. 11,177).

2.) For the Prosecution in this ^{trial} ~~action~~, there has been nothing whatever to prevent their seeking in all the countries of Europe for people who were

working in Ludwigshafen-Opau during the war. They also made use of this possibility; but they found nobody who was prepared to testify against the Ludwigshafen-Opau Works and its manager, with the exception of the former prisoner of war Gronet, whose testimony, for reasons to be found in the paragraph on "Prisoners of War" (page 69) and in Supplement B to this Trial-Brief, can be disregarded. The affidavit of the Frenchman Chaubot, contained in Prosecution Document Book LXIX as Doc. NI-7499, was not offered by the Prosecution at all; the affidavit of the witness Rudolf Marek, at first offered as Prosecution Exhibit 1348 (Doc. NI-7372, Book LXIX p. 71)

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was withdrawn by the Prosecution shortly before the cross-examination of this witness, on grounds that ~~it~~ did not carry much conviction.

(English Transcript p. 4,949, German Transcr., p. 4,967.

3.) The Defense, on the other hand, found themselves in a position of extreme difficulty in regard to the obtaining of evidence. They had no possibility of travelling abroad in order to seek out the former foreign workers of the Ludwigshafen-Opau Works and obtain testimonials from them. Evidence:

Doc. W 544, Exh. W 203, Doc. Book W V, p. 30.

4.) In view of the difficult position of the Defense described under 3.), the statements of former foreign workers of the Ludwigshafen-Opau Works submitted by them in Book IV A, acquire a special importance.

Exh. W 175 - W 183 in Document Book W IV A, p. 1-24

confirm in manifold respects all that has been represented under III regarding the exemplary humane treatment and care of the foreign workers in Ludwigshafen-Opau.

Exh. W 184 - W 197 in Doc. Book W IV A, pp. 25-71

submit - attested by affidavits - a series of appreciative letters from former foreign workers of the Ludwigshafen-Opau Works, which reveal the close and sincere attachment of these former foreign workers to their erstwhile co-workers, and superiors and to the Ludwigshafen-Opau Works. All these former foreign workers in general address themselves in the heartiest manner to their one-time German co-workers and show the greatest respect and affection for their former superiors, and their letters betray with what pleasure they look back on the time they spent in Ludwigshafen. All the documents of Book IV A confirm the existence of the fine and natural human relationship that developed during the war between the Ludwigshafen-Opau Works and its foreign workers. It is precisely this thoroughly humane and warm atmosphere that surrounded the life of the foreign workers in Ludwigshafen-Opau under Dr. Wurster's management, combined with the completeness of the evidence submitted by the Defense on this problem, that shows that in Ludwigshafen-Opau the treatment of the foreign workers was not merely - as described in the Trial-Brief of the Prosecution of

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13 December 1947, Part III, p. 29 - "somewhat improved", but that this problem was here attacked and solved in a manner that was diametrically opposed to the principle of "slave labor".

Section D

Prisoners of War.

With reference to the employment of prisoners of war, the Prosecution charges the defendants in the Indictment with having violated numerous regulations of the Geneva Convention concerning the treatment of prisoners of war; in particular, the defendants are said to have

- a) violated Art. 31 of the Geneva Convention, in that they took part in

"The use of prisoners of war in war operations and work having a direct relation to war operations, including the manufacture and transportation of war material and equipment" (No. 120 of the Indictment).

This charge is repeated in No. 124 of the Indictment, where it states:

"The exploitation of enslaved workers and of prisoners of war for works directly connected with war operations was standard policy of Farben".

- b) The Indictment further charges the defendants with inhuman treatment of the prisoners of war in every conceivable direction (No. 128 of the Indictment).

Accordingly, the following statements are divided into two principal groups, viz:

- I. Evidence that Dr. Wurster cannot be charged with any inadmissible employment of prisoners of war;
- II. Evidence that there was no inhuman treatment of prisoners of war in the Ludwigshafen-Oppau Works under Dr. Wurster.

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inadmissible

I. Proof that Dr. Wurster cannot be charged with ~~improper employment~~ of prisoners of war.

The employment of prisoners of war for working is in itself permitted (Article 27 of the Geneva Convention). However, the Geneva Convention provides certain restrictions when prisoners of war are employed for work. The responsibility of observing the restrictions, as provided by the Geneva Convention, lies with the Wehrmacht and not with the employer. For

- a) the prisoners of war are assigned by the military offices from the "Stalags" (regular prisoner-of-war camps of the Wehrmacht) to the place of employment, in accordance with the proposals of the District Labor Offices and the local labor offices and with their authoritative participation. (literal quotation from the comprehensive decree of the Reich Labor Minister, which is contained in the Document Book "Assignment and Treatment of Prisoners of War," printed on Page 39, submitted by Attorney Dr. BOETTCHER);
- b) no legal labor relations are established between employer and prisoners of war through the ceding of prisoner-of-war labor. Legal relations exist only between the ^{"Stalag"} ~~camp~~ and the employer (literal quotation from the Memorandum of the Reich Labor Minister, contained in the quoted Document Book of Dr. Boettcher, referring to prisoners of war and printed on Page 50);
- c) for the observance of the restrictive provisions of the Geneva Convention, the Wehrmacht appointed special inspection officers, who were responsible for the employment of prisoners of war taking place in accordance with the stipulations of international law.

(Testimony of MILCH, English Transcript Page 5 338, German Transcript Page 5 367,
Testimony of Dr. Wurster, English Transcript Page 11 053,
German Transcript Page 11 256/57.)

the
Accordingly responsibility of Dr. Wurster for any inadmissible

labor allocation of prisoners of war within his sphere of authority in Ludwigshafen-Oppau, could be assumed only in the event of two things co-incident: namely:

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- 1) If in fact within the Ludwigshafen-Oppau Works an ^{employment} ~~assignment~~ of prisoners of war had taken place which was contrary to the provisions of the Geneva Convention;
- 2) If, further, precisely with regard to such inadmissible employment Dr. Wurster had taken the initiative, or if he had recognized the existence of such inadmissible employment and had not stopped it, although he could have done so.

The evidence submitted gave no proof of the existence of the first condition, nor that Dr. Wurster took any initiative with respect to the employment of prisoners of war, as is shown in detail in the following 1) and 2).

1) Prisoners of war were not employed in Ludwigshafen-Oppau in contravention of the provisions of the Geneva Convention.

a) Article 31 of the Geneva Convention.

The Prosecution submitted no evidence whatsoever to prove that in Ludwigshafen-Oppau prisoners of war were employed to do work which, in accordance with the principle of Article 31 of the Geneva Convention, could have been classified as being in direct relation with the military operations in the war. The only Prosecution witness, GRENOT, whose absolute unreliability, moreover, will be demonstrated later on, was, according to his own testimony, employed in the electrical ^{department} ~~power plant~~ Oppau and occasionally on transport work ^{or} ~~on~~ the repair of bomb damage.

(Testimony Grenot, English Transcript Page 3354 and 3363, German Transcript Page 3380 and 3388.)

The evidence of the Defense shows the following:

The Ludwigshafen-Oppau Works manufactured neither weapons nor munitions. (Compare the organizational set-up of the Ludwigshafen-Oppau Works, Document W 3, Ed. 1/2, Document Book W I, Page 25, which shows all of the production departments of the Ludwigshafen-Oppau Works; compare further

Testimony of Dr. Wurster, English Transcript Page 11.054, German Transcript Page 11.259.)

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The Ludwigshafen-Oppau Works for the rest, were not an armaments-plant, but a so-called KL-plant (note by Translator: plants classified as being vital for the war effort);

Note by Defense Counsel: plants classified as being essential for life and war
(cf. English Transcript Pages 11.044/5, German Transcript Page 11.248.)

In these circumstances, the work of the prisoners of war in Ludwigshafen-Oppau could not even otherwise have borne any direct relation to operations of war.

In so far as the legal aspects of Article 31 of the Geneva Convention are concerned, attention is drawn to the ~~abstracts~~^{ex}tracts of the official memoranda of the Geneva Conference of 1929, contained in Supplement A attached to this Trial Brief, which led to the Geneva Convention in 1929. These memoranda were obtained by the Defense from private sources, only after the taking of evidence had been concluded, but they are of course at the disposition not only of the Tribunal but also of the Prosecution for inspection. The extract from the final report of the sub-committee ^{to} ~~of~~ the Plenary Assembly, reproduced in Supplement A, in which the guiding principles of the Convention are developed, should show two things:

*) the Article 31 of the Geneva Convention replaces

aa) In the relation of two States, both of which are bound by the Geneva Convention, *) the corresponding provisions of the Hague Regulations of Land Warfare (occasionally the Prosecution took a view which differed from this interpretation).

bb) Article 31 of the Geneva Convention must be interpreted in a limited sense, since otherwise, in view of the total character of modern warfare, all labor by prisoners of war would have to be prohibited, which would be contrary to reason.

b) Article 32 of the Geneva Convention.

Prosecution

The evidence of the /has not shown that prisoners of war in Ludwigshafen-Oppau were used for unhealthy or dangerous work. Even the testimony of the Prosecution witness Grenot asserts nothing in this direction. The evidence of the Defense shows that Ludwigshafen-Oppau cannot be described as a dangerous plant.

(Testimony of Dr. Ketterer; Document W 229, Ech. W 213, Document Book W V, Page 64, Testimony Jul. Eith, Doc. W 228, Ech. W 214, Doc. Book W V, Page 65.)

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c) According to Article 27 of the Geneva Convention, non-commissioned officers, unless they specifically request a paid occupation, may be assigned only to supervisory duties. In this connection, the Defense refers to the testimony of the Yugoslav witness Podrag VLAJIC,

(English Transcript, Page 11.035, German Transcript Page 11.239.)

who has testified that the prisoner-of-war non-commissioned officers of Camp V were employed only in administrative posts of the camp. For the rest, the managers of the plant were not acquainted in any way with the personal status of the prisoners of war who were to them assigned for work so that it is exclusively the Wehrmacht which bears the responsibility for the strict observance also of Article 27 of the Geneva Convention.

2) Dr. Wurster did not take the initiative in securing prisoner-of-war labor.

In the Trial Brief, Part III, dated 13 December 1947, at the bottom of Page 23, the Prosecution asserts that:

"On 31 January 1941, the Ludwigshafen management resolved that prisoners of war were to be used on a larger scale."

The corresponding passage of the minutes of the meeting of the directors, held in Ludwigshafen on 31 January 1941, as contained in

Documents NI-6285, Prosecution Exh. 1335, Prosecution Document Book LII, English Page 21, German Page 25,

says, however, the following:

"The effect of the impending call-ups were discussed and the necessary measures decided upon, including, i.e., larger ~~assignment~~ ^{employment} of prisoners-of-war, also in so-called ~~unobjectionable~~ ^{unobjectionable} ~~factory plants~~ ^{manufacturing plants}."

By this decision, however, it was not intended to demand

additional prisoners of war as workers, but merely to re-arrange within the plant a part of the prisoners of war already available in such a fashion that, from then on, they would be working in a manufacturing plant instead of in other kinds of installations.

(Testimony of Dr. Wurster, English Transcript Page 11.053, German Transcript Page 11.258.)

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For the rest, the evidence produced by the Defense shows that the production of the Ludwigshafen-Oppau Works from the end of 1939 was determined exclusively by orders from Government steering offices,

(Statement by Dr. v. Nagel, Doc. W 254, Exh. W 96, Doc. Vol. W III, p. 19), that the Ludwigshafen-Oppau Works during the whole of the war always tried to cover their requirements in manpower, necessitated by Government production orders, primarily by the employment of German workers, (Eckert's statement Doc. W 241, Exh. W 94, Doc. vol. W III, page 15), and that during the war it was simply not possible to refuse allocated workers.

(Minzenmeyer's statement, Doc. W 145, Exh. W 95, Doc. vol. ^W III, page 17). This eliminates any initiative by Dr. Wurster relative to the employment of prisoners of war in his plant in general and certainly in respect to any inadmissible allocation of prisoners of war, which, according to 1), did not occur in Ludwigshafen-Oppau at all.

II. Proof that in the Ludwigshafen-Oppau Works under Dr. Wurster there was no inhuman treatment of prisoners of war, as well as proof that the prisoners of war were thoroughly cared for.

As corroboration of the existence of abuses, as generally asserted in No. 128 of the Indictment, the Prosecution refers in Trial Brief, part III, dated 13 December 1947, on pages 23/24, to the testimony of the prosecution witness, Grenot, who "has indicated some of the aberrations growing out of forced labor at Ludwigshafen, including brutal acts by the plant police."

(Doc. NI-7500, Pros. Exh. 1347, Volume 69, page 67)

The Defense Counsel of Dr. Wurster is of the opinion that the complete untrustworthiness of the Prosecution witness Grenot has become clearly obvious. In order to establish this opinion, the original testimonies of the witness Grenot, in appendix B of this Trial Brief, have been placed opposite his later divergent statements, from which alone his malice and absolute untrustworthiness are already evident. In addition,

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in appendix B, Grenot's statements are also placed opposite the divergent facts, as established by the comprehensive evidence produced by the Defense. The explanations in appendix B necessarily lead to the conclusion that Grenot's statements are by no means competent to prove any incriminating facts. For this reason alone, they must remain outside of consideration.

In this connection, the Defense also refers to the explanations as to their exceptionally difficult position in obtaining evidence, (Beweisnotstand), which they made when Grenot's affidavit was submitted by the Prosecution.

(Engl. transcript pages 3274-75, German transcript p. 3297-99).

As Dr. Wurster's counsel, during the whole course of the trial, was not given the same possibility as the Prosecution had to make enquiries in France itself,

(Doc. W 544, Exh. W 203, Doc. Book W V, page 30),

Dr. Wurster's Counsel also for this reason thinks it right that the Court, in judging the case of Dr. Wurster, should entirely disregard Grenot's statements.

For the rest, it should not be left unmentioned that, if the conditions at Ludwigshafen-Oppau were of such a nature as the Prosecution witness Grenot tries to make us believe, the Prosecution would surely have found more than one single incriminating witness among the many thousands of foreigners who were in Ludwigshafen-Oppau during the war, some of whom even remained there for months after the war.

(Dr. Wurster's statement, Engl. transcript, page 11057,
German transcript, page 11262).

In the following explanations the Defense particularly relies on the testimony of the witness Podrag Vljajic, who served as officer candidate

in the Yugoslavian army and who is to-day an official in the French Military Government. The Defense was fortunately able to bring this witness before the Court without the necessity of travelling abroad, owing to the fact that after the war he was unable to return to his native country because of the political conditions prevailing there and because, of his own accord, he put himself at the disposal of the Defense for the sake of truth. This witness was a prisoner of war

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in Camp No. V of the I.G. works at Ludwigshafen-Oppau at the same time as the Prosecution witness Gronot^{and} associated particularly closely with the French prisoners of war.

(English transcript pages 11018-11020; 11028; 11037,
German transcript " 11223-11224, 11232, 11241).

The credibility of this witness was not only^{not} shaken by cross-examination

(English transcript page 11038, German transcript page 11247)

or by re-examination,

(English transcript page 11043, German transcript page 11247)

but confirmed to its full extent.

The following explanations about the treatment of prisoners of war at Ludwigshafen-Oppau deal first, under Nos. 1-7, with the abuses asserted under No. 128 of the Indictment and subsequently with a few other factors.

- 1) "Inadequate food rations".
(No. 128 of the indictment).

In order to prove the incorrectness of this allegation, the Defense refers to

Vlajic's testimony, Engl. transcript, pages 11023-11026;
German transcript, " 11226-11229,

in connection with the diet of the prisoners of war,

Doc. W 12, Exh. W 19, Doc. Book W V, page 55,

the table of food rations,

Doc. W 4, Exh. W 114, Doc. Book W III, page 101,

Bordel's statement,

Doc. W 203, Exh. W 198, Doc. Book W V, page 6 par. 8 ,

Schoenung's statement,

Doc. W 217, Exh. W 199, Doc. Book W V, page 13, par. 8, 9 ,
testimony by the Czech worker Latzke ,

Doc. W 249, Exh. W 208, Doc. Book W V, page 51.

- 2) "Overcrowded and filthy sleeping quarters".
(No. 128 of the indictment).

Proof to the contrary and proof of model equipment of the camp, also in hygienic respects,

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Statements:

VLAJIC English transcript, page 11021, German transcript page 11225,
 Dr. WURSTER English transcript, page 11045, German transcript page 11249,
 BERDEL Doc. W 203, Exh. W 198, Doc. Book W V, page 8 especially section 5,
 SCHOENUNG Doc. W 217, Exh. W 199, Doc. Book W V, page 13 especially section 2.

- 3) "Excessive hours of long physical labor"
 (Section 128 of the indictment). Proof to the contrary:
 Statements:

VLAJIC English transcript, page 11029, German transcript pages 11232-33,
 BERDEL Doc. W 203, Exh. W 198, Doc. Book W V, page 9, especially figure 7,
 SCHOENHAUSER Doc. W 219, Exh. W 200, Doc. Book W V, page 21,
 NEUNZLING Doc. W 159, Exh. W 201, Doc. Book W V, page 24,
 KLOHR Doc. W 216, Exh. W 202, Doc. Book W V, page 26,
 BOKERT Doc. W 233, Exh. W 213, Doc. Book W V, page 62,
 Dr. WURSTER English transcript, page 11055, German transcript page 11261.

Thus the charge of violation of article 30 of the Geneva Convention has been refuted.

- 4) "Excessive hours of hard physical labor"

(Section 128 of the indictment).

The witness VLAJIC testified

(English transcript, pages 11028-29, German transcript, pages 11232-33,) that he had never observed symptoms of overwork in his comrades. Thus the charge of violation of article 29 of the Geneva Convention falls.

- 5) "Continued beatings and other cruel disciplinary measures"

(Section 128 of the indictment). Proof to the contrary:

Statement by the Frenchman Fernand HEYMANN,

Doc. W 125, Exhibit W 177, Doc. Book W IV A, page 7

("I never could ascertain a mistreatment of prisoners or civilian workers").

Statements:

VLAJIC English transcript pages 11027-28, German transcript pages 11231-32,
 Dr. WURSTER English transcript, pages 11056-57, German transcript, page 11262,
 BERDEL Doc. W 203, Exh. W 198, Doc. Book W V, page 7 especially par. 3,
 SCHOENUNG Doc. W 217, Exh. W 199, Doc. Book W V, page 15 especially par. 6,
 KLOHR Doc. W 216, Exh. W 202, Doc. Book V, page 29.

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- 6) "High percentage of illness"
(Section 128 of the indictment).
of the diagram showing sickness statistics for the employees of
Ludwigshafen-Opau
Doc. W 5, Exh. W 140, Doc. Book W IV, page 19
together with SIMON's statement
Doc. W 290, Exh. W 142, Doc. Book W IV, page 20
Dr. WURSTER's statement, English transcript pages 11000-01,
German transcript pages 11167-68.

- 7) "In cases of disease, little or no medical care was furnished as
a result of which many slave laborers died."
(Section 128 of the indictment). Proof to the contrary:

Statements:

VLAJIC English transcript, pages 11022, 11030, German
transcript pages 11225, 11233-34,
BERDEL Doc. W 203, Exh. W 198, Doc. Book W V, page 6,
especially par. 10, second part,
SCHOENUNG Doc. W 217, Exh. W 199, Doc. Book V, page 13,
especially par. 3,
Dr. WURSTER Engl. transcript page 11058, German transcript
page 11264.

8) Statements:

Pastor TRAUHWEIN Doc. W 189, Exh. W 215, Doc. Book W V, page 57
VLAJIC English transcript, page 11021, German transcript
page 11225 (2 chapels)
Dr. WURSTER English transcript page 11051, German transcript
page 11253,

show that provision was made for the spiritual wellbeing of the
prisoners of war (contrary to the official government policy.)

in religious respect

9) Statements:

VLAJIC English transcript, page 11031, German transcript,
page 11234,
Dr. WURSTER English transcript, pages 11049-50, German transcript
page 11253
BERDEL Doc. W 203, Exh. W 198, Doc. Book W V, page 6,
section 10, last sentence,
SCHOENUNG Doc. W 217, Exh. W 199, Doc. Book W V, page 13,
section 11,

show that provision was made by the factory for the physical well-
being of P.O.W.'s. after air raids and that Dr. WURSTER ~~made~~
personally efforts in this matter.

exposed himself

- 10) As to the passive air defense measures taken for the prisoners
of war the evidence shows that

a) during working hours prisoners of war were allowed to use
the same shelters as all other German and foreign workers.

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This was admitted even by the Prosecution witness Grenot, ~~albeit~~ in cross-examination.

English transcript, page 3381, German transcript page 3403.

b) Outside working hours the Wehrmacht was solely responsible for Air Raid Precaution.

(Vljacic's statement, English transcript page 11030-31,
German transcript page 11234,

Dr. Wurster, English transcript, page 11048,
German transcript page 11252).

When the Camp Commander permitted prisoners of war to leave the camp during air raid warnings at night, they were given permission to use the air raid shelters of the factory at night time also.

(Vljacic's statement, English transcript page 11032
German transcript page 11235).

The allegation that it was made difficult for prisoners of war to enter air raid shelters, which would seem to be implied in

Prosecution Exh. 1343, Prosecution Document Book LXIX,
English page 54, German page 74,

has been refuted by the statement of the witness

Vljacic, English transcript page 11035,
German transcript page 11239),

cf. also Dr. Wurster's statement in connection with the document mentioned;

English transcript page 11058,
German transcript page 11264.

11) What measures were taken to organize recreational activities for the prisoners of war is shown by statements:

Vljacic English transcript pages 11034/35, German transcript
page 11238

Dr. Wurster English transcript page 11051, German transcript
pages 11255-56,

Berdel Document W 203, Exh. W 198, Document Book W V, page 6,
especially section 11,

Schönerung Document W 217, Exh. W 199, Document Book W V, page 13,
especially section 12.

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12) The following evidence shows the successful efforts made by the Ludwigshafen-Cppau Works to ensure for the prisoners of war working there exceptionally high wages:

Circular letter from the Personnel Department of Ludwigshafen, dated 1 November 1941,

Doc. W 545, Exh. W 21C, Document Beck W V, page 58,

Statements by:

Oskar Hermann, Doc. W 123, Exh. W 211, Document Beck W V, page 6C,

Vlajic. English transcript, pages 11C26-27, German transcript page 1123C.

III. Summary.

To sum up, the evidence shows that in Ludwigshafen-Cppau the Geneva Convention was in no way violated and that in the employment and treatment of the prisoners of war the laws of humanity were more-over fully observed. We would like to draw your attention to the following circumstances which provide indirect proof of this,

a) The prisoners of war in Camp No. V could contact the representatives of the International Red Cross through their delegates unhindered. Had conditions in Camp V been unsatisfactory they would have availed themselves of these opportunities

(Vlačić's statement, Engl. transcript, page 11034,
German transcript, page 11238).

b) Camp V was inspected by representatives of international organizations who made no complaints.

(Dr. Wurster's statement, English transcript page 11059,
German transcript page 11265).

c) Neither during the war nor after the war were any complaints made to Dr. Wurster. The investigations conducted by Military Government did not lead to complaints either.

(Dr. Wurster's statement, English transcript page 11059,
German transcript page 11265).

d) Finally, the friendly atmosphere which prevailed after the war between the factory and a part of the prisoners of war, who had been working there, is also a proof of the good treatment the prisoners of war received in Ludwigshafen-Cppau.

Document W 212, Exh. W 217, Document Beck W V, page 70 and
Document W 210, Exh. W 218, Document Beck W V, page 72.

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Section E

Dr. Wurster as Betriebsfuehrer.

In an industrial plant which employs more than 30,000 persons one can seldom prove that all measures taken to ensure the wellbeing of the employees directly originate/ from action taken by the Betriebsfuehrer just as it is impossible to make such a Betriebsfuehrer

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responsible for occasional misbehavior - if any - on the part of his subordinates.

In the case of the I.G. plant at Ludwigshafen-Cppau it has, however, clearly been shown that the atmosphere of warm human sympathy which prevailed there emanated from the Betriebsfuehrer, Dr. Wurster.

In the first place a number of documents bearing Dr. Wurster's signature, show that Dr. Wurster took a strong personal interest in the treatment of foreign workers.

Document W 523, Exh. W 127, Document Beck W III, page 128,

Document W 524, Exh. W 131, Document Beck W III, page 138.

And the statement by the factory doctor Dr. med Krafft,

Document W 236, Exh. W 138, Document Beck W IV, page 1,

and the statement by Kurt Schaefer who was in charge of the Eastern Workers

Document W 226, Exh. W 164, Document Beck W IV, page 89,

show that Dr. Wurster personally collaborated in all measures taken on behalf of the foreign workers.

Dr. Wurster's noble aim to create for the foreign workers within his plant a home atmosphere is expressed particularly clearly in the preface to the pictorial report issued at the end of 1941:

Document W 7, Exh. W 7, Document Beck W III, page 34.

Dr. Wurster's statement,

English transcript page 11045, German transcript page 11248,

is significant for his attitude towards the prisoners of war:

"Actually, prisoners of war are not employees of the factory in the sense of the law, and thus there was no immediate responsibility. Naturally, however, I considered it a purely humane obligation on my part to take care for the prisoners of war as far as possible." *).

*) Dr. Wurster's humane attitude towards members of enemy armies is also shown by the way in which he treated allied airmen, who had parachuted down and wounded soldiers, as has been testified by Dr. Fritz Müller's statement:

Doc. W 242, Exh. W 216, Document Beck W V, page 68.

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It is as a matter of fact, precisely Dr. Wurster's social mindedness and humanitarianism towards all men and in particular towards the workers of his plant, irrespective of nationality, creed, party or rank, which is the most striking characteristic of this exceptional personality. He has not been described by 2 workers, with whom he had been working when he was a factory student (Workstudent) as "a man of an entirely new type" for nothing. (Exh. W 25, Document Book W I, page 13). This social mindedness and humanitarianism of Dr. Wurster's are also shown in a particularly impressive way in the documents W 101 to W 106, Book W III, pages 41 to 66). The witness Pinnaw (Exh. W 102) describes him as follows " Not only was Dr. Wurster the responsible mainstay of the progressive social policy prevailing in the Ludwigshafen and Oppau plant during a long honorable tradition of several decades, but he was also the heart and soul of this policy".

The witness Sturn (Exh. W 101) as well as other witnesses confirm that Dr. Wurster's sympathy, "applied in ^{particular} ~~large measure~~ to the foreign workers with respect to their having been separated from family and homeland."

In part V of this Trial Brief, which deals with the personality of Dr. Wurster as a whole it will be shown that this thoroughly human attitude of Dr. Wurster's to all social questions was not motivated by rationalist considerations, but sprang from his deeply religious, Christian character.

Part IV

Use of Poison Gas for the Extermination of
Enslaved Persons.

(Count III of the Indictment).

The wholly untenable, horrible assertions of the Prosecution concerning the alleged participation of the I.G. in the killing of people in concentration camps, are disproved in a general way in the Trial Brief to the Degesch-complex, which was submitted by Dr. Berndt, Attorney-at-Law. In the following, the evidence, in so far as it concerns Dr. Wurster's personal attitude to this complex, will be resifted.

When considering the evidence as submitted by the Prosecution, one sees straight away that the name of Dr. Wurster appears only once in the pertinent Prosecution Documents of Prosecution Document Books 82 and 83, namely, in the declaration by Paul Haeni, a Prosecution official,

Doc. NI-12073, Prosecution Exh. 1766, Doc. Book 82, p.85, which says no more than that Dr. Wurster was a member of the Administrative Committee of Degesch.

In the documentary evidence introduced by the Prosecution during the submission of evidence by the Defense, the name of Dr. Wursters is again twice mentioned in the following documents:

a) Doc. NI - 12 665, Prosecution Exh. 1776, letter from Degesch to the I.G. Works Leverkusen, dated 15 Nov. 1944 (letter accompanying the Degesch yearly business report for 1944). At the bottom of this document there is a note, saying:

"To be passed to: - Dr. Brueggemann, Dir. C. Wurster, Dir. Hoorlein".

A glance at the photostat copy of the original document, which was handed to the Secretary General, shows that this note was written by Degesch before the document was sent out; the original document does not show that the letter was really passed on in compliance with this instruction to circulate. Further, it will

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be shown below that the Degesch business report for 1943 actually did not reach Dr. Hurster before the collapse.

b) At the interrogation of the witness Dr. Peters,

NI - 15 067, Prosecution Exh. 2088

(Supplement to the affidavit of Dr. Peters NI-12 111, Prosecution Exh. 2087, in which Dr. Hurster's name is not even mentioned), he, Dr. Peters, mentions the correspondence between Degesch and the I.G. Works in Ludwigshafen with respect to T-Gas, Cartox, Calcid and Ventox, and states that in the more important matters, copies or private letters were supposed to have been sent directly to Dr. Hurster. He emphasizes, however, that in the correspondence between Degesch and Ludwigshafen, there was "no necessity to make any statements in writing concerning Zyklon."

This is all the documentary evidence of the Prosecution contains with respect to Dr. Hurster's relations with Degesch.

Against this, the evidence submitted by the Defense Counsel of Dr. Hurster proves unambiguously that Dr. Hurster bore not the slightest trace of any responsibility for the terrible use to which Zyklon B was wrongly put. This is submitted in connection with the statements of the Prosecution Trial Brief, Part III, of 13 Dec. 1947, Sections III B, C and D:

I. It is untrue that Dr. Hurster participated in the course of his work, in the production and supply of Zyklon B Gas.

Supplementing the evidence which was submitted by the entire Defense, the evidence submitted for Dr. Hurster shows the following:

- 1) Neither Dr. Hurster personally nor the Ludwigshafen-Oppau works had anything whatsoever to do with the production and the sale of Zyklon.
(Testimony of Dr. Goldschmidt, Doc. W 201, Exh. W 219, Doc. Book W VI, p. 1 under No. 2 b, last sentence, Testimony of Dr. Pfannmueller, Doc. W 244, Exh. W 221, Doc. Book W VI, p. 6, under No. 2).
- 2) The meeting of the Degesch Administrative Committee, on 19 June 1940, at which Dr. Hurster joined this board, (Supplement to Degesch Doc. 14, Degesch Exh. 18, Doc. Book Degesch I, in particular p. 55) was the first and the last meeting of this board in which Dr.

Trial Brief Wurster

Wurster participated, because after that no more meetings at all were held. (Testimony of Dr. Goldschmidt, Doc.W.201, Exh. W 219, Doc.Book VI, p.1, in particular 2 c, Cross-examination, Engl. Transcript p.12 902, German Transcript p. 13 105)..

The reasons which led to Dr. Wurster's joining this board, as the successor of Dr. Schumann (Calcid production Ludwigshafen), can be seen from the Testimony of Dr. Goldschmidt, Doc.W 201, Exh.W 219, Doc.Book VI, p.1, in particular p.3.

Dr. Wurster's personal point of view, concerning the significance of the Degesch Administration Committee, may be seen from his memorandum, dated 28 June 1940, concerning the meeting of 19 June 1940,

Doc. W 548, Exh. W 220, Doc.Book VI, p.4.

The meaning and the origin of this memorandum was explained in detail by Dr. Wurster in direct examination, English Transcript p. 11 065, German Transcript p. 11 271.

- 3) Between 19 June 1940 and the collapse, the only Degesch meeting that took place, was the partner's meeting on 4 Sept. 1942.

(Doc. III-12 004, Prosecution Exh. 1772, Doc.Book 82, p.135; Testimony of Dr. Goldschmidt, Doc.W 201, Exh.W 219, Doc.Book VI, p.1, Testimony of Dr.Schlosser, Degesch Doc.No.56, Exh.Degesch 32, Degesch Book II, p.30).

Dr. Wurster did not take part in this partners' meeting, but it is true that he made arrangements for Dr. Pfannmueller to participate as a guest and as representative of the Ludwigshafen Works,

(Testimony of Dr.Pfannmueller, Doc.W 214, Exh.W 221, Doc.Book VI, p.6).

- 4) The Defense documents for Dr. Wurster show the following with respect to his being informed in writing about the Degesch Zyklon business:

(Testimony of Dr. Pfannmueller, Dr. Buclow and Hans Morgenthauer in Doc. W 294, Exh. W 224, Doc. Book W VI, p. 13):

- a) Business correspondence or other documents of the firms Testa

and Heli were not received by Dr. Wurster.

- b) The Degesch monthly turnover reports, which incidentally did not contain any details about the Degesch Zyklon sales,

(Doc. Degesch 26, Exh. Degesch 22, Degesch Book I, p.74),

were not received by Dr. Wurster.

- c) Besides, there was no reason for a correspondence between Degesch and Dr. Wurster or Ludwigshafen in connection with the Zyklon business.

(Testimony of Dr. Peters, in Prosecution Exh. 2068 (cf. above)).

- d) All that Dr. Wurster received were the usual Degesch yearly reports and the last Degesch report which he received before the collapse, was that for 1942. The yearly business reports for 1943 and 1944 were not received by Dr. Wurster until after the collapse. This is substantiated by Doc. NI-12 664, Prosecution Exh. 1777, which shows that the Degesch business report for 1943 was received by the Special-Department F of Leverkusen, which had been transferred to Upper Bavaria, only in February 1945; since Ludwigshafen was occupied as early as 21 March 1945, there can be no doubt that the Special Department F could not send ^{any more} the business report for 1943 to the Ludwigshafen Works. For the rest, compare the

Statement of Dr. Wurster, Engl. Transcript p. 11064, German Transcript p. 11270.

II. It is untrue that Dr. Wurster knew of extermination by gassing.

The Prosecution did not submit any evidence to prove that Dr. Wurster was aware of the gassings.

The evidence of the Defense shows that Dr. Wurster had no notion whatsoever of the exterminations in the concentration camps before the collapse, and that he learned about them only after the collapse. To supplement the evidence submitted by the entire Defense on the Degesch complex, attention is drawn to the following evidence which was submitted especially for Dr. Wurster:

Testimony of Dr. Pfannmueller, Doc. W 244, Exh. W 221, Doc. Book VI, p. 6,

Testimony of Konrad Gabel, Doc. W 232, Exh. W 222, Doc. Book VI, p. 9.

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Testimony Dr. Buelow, Doc. W 298, Exh. W 223, Doc. Book W VI, p. 11;
Testimony Dr. Fritz Mueller, Doc. W 231, Exh. W 225, Doc. Book W VI, p. 16,
Testimony Dr. Cyriax, Doc. W 253, Exh. W 226, Doc. Book W VI, p. 18,
Testimony Karl v. Heider, Doc. W 297, Exh. W 227, Doc. Book W VI, p. 22.

III. It is untrue that Dr. Wurster knew that Zyklon B was used or that he intentionally closed his eyes to what was happening.

It stands to reason that, if Dr. Wurster had no knowledge at all of the extermination of human beings and of gasings (cf. II), that he then could not have had any knowledge either of the wrong use to which Zyklon B was being put. The Prosecution has not submitted the slightest evidence to prove the assertion that Dr. Wurster intentionally closed his eyes to what was happening. It is self-evident that a person can not close his eyes to a thing unless he has at least an inkling of the thing. The evidence of the Defense, as quoted under II in connection with the statements of Dr. Wurster in

Direct examination, Engl. Transcr. p. 11 062 and 11 066, German Transcript p. 11 268 and 11 272 and in the
Redirect examination, Engl. Transcr. p. 11 204, German Transcript p. 11 373

show that

- 1) Dr. Wurster had no idea of the wrong use to which Zyklon B was put in the Concentration camps.
- 2) Dr. Wurster would never have hesitated to act at once, if he had had even the slightest inkling of what was happening.

The correctness of these two assertions is beyond all doubt if one considers Dr. Wurster's whole personality, as described in Part III, Section E and in Part V of this Trial Brief. Special mention should be made here of the opinion of high and the very highest dignitaries of both Christian Churches on Dr. Wurster

(Exh. W 288 to 234 in Doc. Book W VI, p. 24 to 38),

as well as to the numerous documents about the help which Dr. Wurster extended precisely to people who had been persecuted for racial reasons:

(Exh. W 236 to 244, in Doc. Book W VI, p. 42 to 75).

Part V

Dr. WURSTER's Personality.

In the introduction to this Trial-Brief the contention has already been expounded, that in the case of Dr. Wurster, his innocence is proved by the facts alone. In Parts I to IV of this Trial Brief we have endeavored to submit these facts to the Tribunal in a comprehensive fashion. A description of Dr. Wurster's personality can therefore have only a supplementary value, but this description will prove to the Tribunal that this man, even if judged solely by his personality, simply can not be a war criminal.

I. The life history of Dr. Wurster is described in the documents contained in Doc. Book W I and his supplementary statements under direct examination. His career in the I.G. and the positions he held in industry have already been dealt with in Part I of this Trial Brief under I. All we will attempt to do here is to underline the characteristic features of Dr. Wurster's career. The following emerges: -

- 1) Dr. Wurster comes from a simple middle-class family and built up his life by his own efforts; even his education he had to finance by working during his vacations.

(Statement of Dr. Wurster, English Transcript, p.10 861, German Transcript p. 11 052, Doc. W 305, Exh. W 21, Doc. Book W I, p.1).

- Dr. Wurster is a self-made-man in the very sense of the word.*
2) Dr. Wurster owes his success to neither political, nor family nor any other connections, but solely to his own personality and his accomplishments.

(Doc. W 175, Exh. W 22, Doc. Book I, p.5, Doc. W 180, Exh. W 23, Doc. Book I, p. 7).

- 3) Humanity owes to Dr. Wurster as chemist and scientist a series of inventions, which today are still important in chemical science and industry.

(Doc. W 287, Exh. W 26, Doc. Book W I, p. 16, Statement of Dr. Wurster, English Transcript, p.10 863, German Transcript p. 11 054).

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The name of Dr. Wurster has a good reputation in scientific circles.

(Doc. W 168, Exh. W 33, Doc. Beck W I, p. 49),

Doc. W 594, Exh. W 34, Doc. Beck W I, p. 52).

4) The main interest in Dr. Wurster's life, apart from his family, was his work, and in that primarily the care of the Ludwigshafen-Cppau Werks and its employees.

(Doc. W 304, Exh. W 30, Doc. Beck W I, p.27, par.4).

This was particularly the case during the hard years of World War II. Dr. Wurster, while on the witness stand, rightly compared his work for the plant and its employees during those years to that of a steersman who tries to steer his ship and its crew unharmed through a hurricane.

(Testimony Dr. Wurster, English transcript p. 10924,
German transcript p. 11084).

5) Contrary to a Government order, Dr. Wurster refused to leave his works on the collapse in 1945.

(Doc. W 102, Exh. W 40, Doc. Beck W I, p. 70).

In the critical hour, with utter disregard for his personal safety, he saved the works from the destruction mania of a system that was breaking down.

(Testimony Dr. Wurster, English transcript pp. 10916-17,
German transcript pp. 11073-75.)

in connection with

Doc. W 549, Exh. W 41, Doc. Beck W I, p. 72 and

Doc. W 550, Exh. W 42, Doc. Beck W I, p. 73).

During the two-year period from the capitulation up to the beginning of this trial, it was Dr. Wurster's aim, as manager of the Ludwigshafen-^{an} Cppau Werks, to preserve/existence basis for the employees of those Werks.

(Doc. W 11, Exh. W 43, Document Beck W I, p. 75).

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6) Dr. Wurster was not rewarded for his work by wealth and a comfortable life; his income always remained modest in relation to his work.

(Dec. W 275, Exh. W 27, Dec.Beck W I, p. 18);

He found his reward in the respect and affection of all his

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employees, who, when he was extradited to Nuremberg on 20 August 1947, simply were unable to understand that this man was to be tried as a war criminal.

(Doc. W 506, Exh. W 47, Doc. Beck W I, p. 90),

Doc. W 507, Exh. W 48, Doc. Beck W I, p. 92).

II. If an attempt were made to draw from the numerous documents in Doc. Beck^W I and VI the most characteristic features of Dr. Wurster's personality, it would show the following picture:

- 1) Dr. Wurster's character is beyond any doubt. He is described as "a man of great kindness of heart, ^{without any class prejudice} ~~who helped his collaborators~~ ~~regardless of their rank,~~ and about whom all his collaborators were extremely enthusiastic".

(Doc. W 132, Exh. W 253, Document Beck W VI, p. 98).

He is furthermore praised for "his straightforward and sincere manner, his decent, unblemished character, his dignified confidence-inspiring attitude, his unequivocal and clear decisions, his understandingly attentive readiness to help in social problems, his high concept of duty and his constant willingness to sacrifice for the hard ~~tasks~~ of his position".

(Doc. W 179, Exh. W 255, Document Beck W VI, p. 106).

- 2) Dr. Wurster is a good German, but, at the same time, he is a cosmopolitan, as is evident from the contemporary document

W 562, Exh. W 24, Doc. Beck W I, p. 11.

There were not many Germans who held a responsible position in the Third Reich and dared, particularly after the outbreak of the second World War, to speak publicly of the "progress of the whole human race".

- 3) Dr. Wurster is not interested in politics. Humanity and technology are his strong points. He refused on these grounds to join the Nazi Party even as late as 1938.

(Testimony Dr. Wurster, English transcript, p. 10914-15,
German transcript, p. 11072).

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The Party intended to place him as being the manager of one of the largest I.G. works, under its

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jurisdiction, and it therefore made him, at the end of 1938, a "Forced Party Member" (Huss-Parteimitglied) by decree.

(Document W 186, Exhibit W 39, Document Book W I, Page 67.)

Numerous opponents of the Nazi regime testify that his entire personality was diametrically opposed to the aggressive Nazi ideology.

(Exhibit W 245-256, Document Book VI, Pages 76-112.)

The liberal atmosphere which Dr. Wurster was able to preserve in the Ludwigshafen-Oppau Works during the time of the Third Reich is described especially in

Exhibit W 246, Document Book W VI, Page 78.

- 4) Dr. Wurster is a faithful and convinced Christian. He remained ^{/true to his faith,} in speech and action, even in the darkest days of the Third Reich.

His reward was not only the grateful recognition of his own Protestant Church, but also the respect of even the highest authorities of the Catholic Church.

(Exh. W 228-234, Document Book W VI, Pages 24-39.)

- 5) Christian moral laws governed Dr. Wurster's actions even during the Third Reich. This was proved by his attitude towards racial persecutees, as is particularly emphasized in

Exh. W 235-244, Document Book W VI, Pages 40-75,

and by his attitude towards political persecutees such as described in

Exh. W 248-251, Document Book W VI, Pages 83-92.

Above all, however, his Christian principles influenced Dr. Wurster's attitude as Betriebsfuhrer in all social questions of the Ludwigshafen-Oppau Works and he did not distinguish between Germans and foreign workers.

(Cf. in this connection the statements in Part III, Par. E of this Trial Brief.)

- 6) The motive for Dr. Wurster remaining on his job during the times of the Third Reich and particularly during the war

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was not ambition nor was it due to weakness, but to the feeling that a steersman must not leave his ship in the hour of danger.

(English Transcript, Page 10924, German Transcript, Page 11034.)

Dr. Wurster frequently proved that he did not lack the necessary personal courage at the right moment, as, for example, at the time when, at his own risk and on his own responsibility, he obtained concessions for the Eastern Workers, and, more especially, at the time of the collapse, when he saved the works from destruction. Numerous documents in Document Book W VI show the gratitude of the employees of these Works for his perseverance and his personal intervention. In this connection, we should like to refer to a particularly impressive passage

(Document W 179, Exh. W 255, Document Book W VI, Page 106.):

"He took great chances with the security of his person to ward off dangers threatening the continuance of the plant and to alleviate hardships to persons under his care. Dr. Wurster's achievements in this respect during the war, particularly during the last dramatic months and days for the plant and its people, must be entered in the annals of the plant as a shining chapter on human greatness, if decency and human honor are not to become concepts without sense or meaning."

In view of these facts, it is no wonder that Dr. Wurster is one of those rare persons who have no enemies and whose integrity is confirmed by people of all classes, parties and creeds, as is shown in Exh. W 228-256 in Document Book W VI. Statements by Col. Rhoads

(Document W 174, Exh. W 44, Document Book W I, Page 73)

and by Capt. Marshall

(Document W 138, Exh. W 45, Document Book W I, Page 79)

show that his personality also impressed those representatives of allied nations who had dealings with him after the capitulation.

Trial Brief Wurster

CERTIFICATE OF TRANSLATION

17 June 1948

We,

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Eugene R. KUN, AGO No. D-429798,
Brigitte TURK, ETO No. 3513C,
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hereby certify that we are duly appointed translators for the German, English and French languages and that the above is a true and correct translation of Trial Brief Wurster.

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.. "END" ..

Trial Brief Wurster

Appendix A.

Excerpt from
the Record of the Diplomatic Conference
convened by the Swiss Federal Council
for the purpose of
Amending the Convention of 6 July 1906
with a view to
Improving the Lot of the Sick and Wounded of the
Armies in the Field
and to Drafting a Convention on the Treatment
of Prisoners of War,
held at Geneva on 27 July 1929

Geneva

Printing Press of the Journal de Genève

1930

(Underlinings occurring in the text are ours)

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Plenary Sessions

FOURTH PLENARY SESSION

Friday 26 July 1929 at 1530 hrs.

M. Paul DINICHERT, President of the Conference took the chair.

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.....

Report by M. WERNER, speaking on behalf of the second Commission, on the
projected Prisoner of War Code.

The Chairman:

The Second Commission formed by you has, in fact, concluded its work, and
the Commission's reporter, M. Werner, member of the Committee of the
International Red Cross, is ready to present the Commission's report.
I therefore request M. Werner kindly to take his place at the desk.

M. Werner (International Committee), reporter:

Mr. Chairman, Madam, Gentlemen,

It is usual for Commissions, even general ones, to give an account of their
work to a plenary meeting in a solemn session which precedes the final
adoption of the text and the signing of the recommendations drafted by them.

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Appendix A

.....

The Hague Conventions having just been mentioned, this appears an appropriate moment to indicate the connection between those Conventions and the present one, namely the regulations governing the laws and customs of land warfare which form a supplement to the IVth. Hague Convention of 18 October 1907.

.....

Page 631/~~624~~632.

While Article 101 of the draft proposed that, in relationships between the signatory states, the present Convention should replace Chapter II of the Hague Regulations which is devoted to prisoners of war, Article 89 adopted by your Commission provides for the present Convention to supplement this Chapter. The formula which we have finally adopted has been drawn up by our eminent and learned colleague M. de HUELLE.

The idea of supplementing the Hague Regulations appeared to us to be in harmony with the desire expressed in the preamble to our Convention, to develop the principles which inspired the work of the two Peace Conferences.

Moreover, the abrogation by our Convention of Chapter II of the Hague Regulations would have been somewhat bold. A document as import it as these regulations forms a solid foundation on which to build a vaster edifice. These Regulations contain, as it were, a preliminary declaration of the rights of prisoners and of the duties of belligerents towards them. We propose to complete this declaration. We propose to advance yet another step. But our starting point remains the Hague Regulations.

It results from the above that, when two belligerents are bound both by the Hague Regulations and by the present Convention, the provisions of the latter shall apply. For our Convention completes, that is to say, develops to a stage of greater advancement the principles of the Hague Regulations, by including new rulings and regulations.

.....

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Appendix A

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Articles 27 to 34 of Section III govern the organization of work, define prohibited work, provided for the system of working detachments and regulate payment.

Two provisions should be given particular prominence:

.....

2) That contained in Article 31, in accordance with which work performed by the prisoners shall have no direct connection with operations of war. This article adds: "The employment of prisoners of war on the production or transportation of arm and munitions of all types and likewise on the transportation of material destined for fighting units is especially forbidden." It seemed impossible to go any further in this direction. In a belligerent country, the efforts of the entire nation are directed towards a single goal. Unless we wish to prohibit the employment of prisoners altogether, which would be unreasonable, we must limit ourselves to prohibiting, but to prohibiting strictly the use of prisoners for work directly connected with operations of war.

.....

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Appendix B

(to page 69 of the trial brief)

List of contradictions in the statements of the Prosecution witness Granot and rebuttal of the statements to prove the incredibility of the witness Granot.

Original statement of Granot

1) Affidavit (Pros.Exh.1347)
"From there (Stalag XII F) I was sent to a disciplinary camp to work in the I.G. Farben plant in Ludwigshafen." During the cross-examination the witness stated at first (Engl. Page 3352, German Page 3378):

"The whole detachment was a punitive detachment."

2) Affidavit (Pros.Exh.1347)
"I arrived at Ludwigshafen in May 1944 and stayed there until the liberation by the American troops in April 1945."
During the cross-examination (Engl.P.3346, German P. 3372) the witness confirms that he worked at Ludwigshafen until April 1945.

3) Affidavit (Pros.Exh. 1347)
"I worked an average of 12 hours every day".....

Divergent later statement and counter-evidence of the Defense.

During the further course of the cross-examination (Engl. P. 3352, German P. 3378) the witness admitted: "However, from what I saw when I got there, I am inclined to think that it was not really a punitive command, but that it was a normal camp."

During further cross-examination, after having been shown the pay record (Lohnkarte) (Engl. P. 3346, German P. 3373) the witness admitted that he only worked at the Ludwigshafen plant until 25 December 1944, that he then fell ill, was taken to the hospital at Eppenheim in March 1945, and there freed by the American troops.

During cross examination (Engl.P.3361-3363, German P. 3386-88) the witness was unable to explain how he arrived at an average of 12 working hours per day.

The testimony of the witness Granot on this point is also rebutted by the following evidence offered by the Defense::

- a) Affidavit Berdel,
Document W 203, Exh. W 198,
Book WV, P. 9, number 7,
- b) Affidavit Schornhaeusser,
Document W 219, Exh. W 200, Book
W V, P. 21,
- c) Affidavit Neunzling,
Document W 159, Exh. W 201, Book
W V, P. 24,
- d) Affidavit Klohr,
Document W 216, Exh. W 202, Book
W V, P. 28,
- e) Affidavit Eckert,
Document W 233, Exh. W 212, Book
W V, P. 62,
- f) Testimony Dr. Wurster,
Engl. P. 11055-56, German P. 11261.

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Appendix B
(to page 69 of the trial brief)

4) Affidavit (Pros.Exh.1347)
"I workedat very hard
work".

During cross-examination (Engl.P.
3363-65, German P. 3388-90)
the witness could not substantiate
this statement and eventually had
to admit that "his description in
the affidavit is to be traced back
to the fact that he did not work
willingly and joyfully".

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Appendix B

- 4a) Testimony during cross-examination (Engl. P. 3358, German P. 3384):
"We had three quarters of an hour of march to get to our working-place; there were about two miles".

1 1/2 from Camp V to Building 72)

The plan of the Ludwigshafen-
Oppau Plant, Document W 1, Exh. W 1, shows that the distance from Camp V to Building 72 was 20 cm, i.e., on a scale of 1 : 5000 = exactly 1 km, as the crow flies, so that, even reckoning with a certain detour, the testimony of the witness cannot be correct. The malice of the witness also in regard to this point is confirmed by the impertinent way in which he gave his answers (Engl. P. 3360, German P. 3385).

- 5) Affidavit (Pros. Exh. 1347)
"During our work we were guarded by the plant police who were armed and who were very strict."

Counter-Evidence:

- 6) The statements of the witness in his affidavit and under cross-examination (Engl. P. 3369, German P. 3393) regarding alleged maltreatment are rebutted by the following:

- a) Affidavit Schornhaeuser, Document W 219, Exh. W 200, Book W V, P. 22,
- b) Affidavit Klohr, Document W 216, Exh. W 202, Book W V, P. 28,
- a) the obviously malicious exaggeration of the original testimony during the course of the cross-examination.
- b) the affidavit of the Frenchman Fernand Heymann, Document W 125, Exh. W 177, Book W IVA, P. 7, ("I never could ascertain a mistreatment of prisoners or civilian workers".)
- c) the testimony of the Yugoslav witness Vljacic (Engl. P. 11027-28, German P. 11231-32)
- d) Testimony Dr. Wurster (Engl. P. 11056-57, German P. 11262)
- e) Affidavit Bordel, Document W 203, Exh. W 198, Book W V, P. 7, Para. 3,
- f) Affidavit Schoenung, Document W 217, Exh. W 199, Book W V, P. 15, Para. 6,
- g) Affidavit Klohr, Document W 216, Exh. W 202, Book W V, P. 29.

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Appendix B

- 7) According to the testimony of the witness Grenot in his affidavit and during cross-examination (Engl. P. 3378-79, German P. 3400-02) a French prisoner of war at the Oppau Plant is alleged to have been shot at in November 1944 by a works policeman while stealing potatoes; he is supposed to have remained in the sick bay for two days, then taken to a hospital at Ludwigshafen and to have died exactly six days after the occurrence.

Counter-Evidence:

- a) Document W 552, Exh. W 145, Book W V, P. 32, in connection with Document W 551, Exh. W 204, Book W V, P. 33, Exh. 145 shows that at Ludwigshafen during the war only the municipal hospital was able to receive prisoners of war. Exh. W 204 shows that the municipal hospital at Ludwigshafen knows absolutely nothing about such an incident.
- b) Testimony of the Yugoslav witness Vlajic (Engl. P. 11033-34, German P. 11237-38). During the period in question the witness, who was a prisoner of war, was employed as an orderly in the sick bay; he did not know anything about the incident. The witness Vlajic had close contact with the French prisoners of war (Engl. P. 11028, German P. 11232). He rightly pointed out that such an incident would have caused great excitement, and would have been reported to the International Red Cross (Engl. P. 11034, German P. 11237).

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Appendix B



- c) Affidavit Schoenung,
Document W 217, Exh. W 199, Book
W V, P. 13, Para. 7.
During the period in question the
affiant was employed in the sick
bay in his capacity as German
Wehrmacht orderly. He did not know
anything about the incident.
- d) Affidavit Berdel,
Document W 203, Exh. W 198, Book
W V, P. 6, Para. 4.
- e) Affidavit Dr. Fritz Mueller,
Document W 256, Exh. W 205,
Book W V, P. 37.
- f) Affidavit Daniel and Steinhart,
Document W 230, Exh. W 206, Book W V,
P. 39.
- g) Testimony Dr. Wurster,
English Page 11057, German P. 11262.

8) According to the testimony of
the witness Grenot (Engl. P. 3343
and 3380, German P. 1169 and 3402)
a Russian is supposed to have been
wounded by being shot by a works
policeman while he was trying to
draw some liquid from a tank truck.

9) Affidavit (Prosecution Exh.
1347)

"The food we received and which
was provided directly by the I.G.
Farben was absolutely insufficient
and of very poor quality."

Counter-Evidence:

- 1) Affidavit Dr. Fritz Mueller,
Document W 256, Exh. W 205,
Book W V, P. 37.
- 2) Testimony of the Yugoslav witness
Vlajic (see number 7 b)
Engl. P. 11034, German P. 11237.
- 3) Affidavit Schoenung Doc. W 217 Exh. W 199 Book W V P. 13
The incredibility of this testimony is shown:
a) by the obviously malicious
exaggeration of the original
statement during cross-examination
(see in particular Engl. P. 3385-
86, German P. 3406,) "one boiled
potato, one slice of bread",
b) Testimony of the Yugoslav witness
Vlajic, Engl. P. 11023-26, German
P. 11226-29,
in connection with Document W 12,
Exh. W 19, Book W V, P. 55.
- c) Affidavit Berdel,
Document W 203, Exh. W 198, Book W
V, P. 6, para. 8
- d) Affidavit Schoenung,
Document W 217, Exh. W 199, Book
W V, P. 13, Para. 8 and 9,
- e) Affidavit of the Czech foreign
worker Latske,
Document W 249, Exh. W 208, Book
W V, P. 51.

par. 7 last
- sentence

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10) Affidavit (Prosecution
Exh. 1347)

"Before October 1944 we were
not authorized to use the bomb
shelters of the plant."

Testimony during cross-examination:
(Engl. P. 3381, German P. 3403):

"When we were working in the factory
we were entitled to go to the same
shelters as the other workers". With
regard to air raid protection at
night, the witness admitted during
cross-examination

(Engl. P. 3382, German P. 3404)
that the Wehrmacht was responsible
for this; he also admitted that it
is possible that the plant management
took measures to get the approval of
the Wehrmacht to allow the prisoners
of war to use the shelter in the
Works coking plant at night.

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11) Affidavit. (Prosecution Exh. 1347)

".....in case of air raids we had to remain unprotected in the camp"

During the cross-examination the witness had to admit (Engl. P. 3381, German P. 3403) that there were in the camp concrete shelters for the prisoners of war. See testimony of Dr. Wurster (Engl. P. 11049, German P. 11253)

12) Affidavit. (Prosecution Exh. 1347)

"..... or to walk 7 kilometers to get shelter under a demolished bridge.... We were obliged to walk 14 kilometers by night in order to go to the bridge".

get shelter
under the demolished
bridge

- a) That the bridge was not 7 km away, but only 2 - 2,4 km is shown in .
- aa) the survey map of the city and district of Ludwigshafen, Document W 542, Exh. W 20, Book W V, P. 31.
- bb) the testimony of the Yugoslav witness Vljacic (Engl. P. 11032-33, German P. 11235-37).
- cc) Affidavit Berdel, Document W 203, Exh. W 198, Book W V, P. 6, Para. 8.
- dd) Affidavit Schoenung, Document W 217, Exh. W 199, Book W V, P. 13, Para. 11
- b) The statement that the prisoners of war "were obliged to go down there" the witness Grotot had to rectify as follows: "We were actually lodged in the supports of the bridge and we were about 500 in the shelter under the supports of the bridge". (Engl. P. 3383, German P. 3405).
- c) The above quoted statements of Vljacic, Berdel (Exh. W 298) and Schoenung (Exh. W 299), also show that the prisoners of war were not "obliged" to go to the bridge, but that they preferred this particularly safe shelter, and that they even preferred it to the plant shelter. Testimony Vljacic (Engl. P. 11032, German P. 11235). The testimony of Vljacic (Engl. P. 11036, German P. 11240) shows particularly clearly that even the civilian population preferred this shelter.

13) Affidavit (Prosecution Exh. 1347)

"Medical care was given to us exclusively by French doctors who were prisoners of war, the I.G. Farben never did anything to take care of us".

Counter-Evidence:

- a) Testimony of the witness Vljacic, Engl. P. 11022 and 11030, German P. 11225 and 11233.
- b) Affidavit Berdel, Document W 203, Exh. W 198, Book W V, P. 6, Para. 10, second half.
- c) Affidavit Schoenung, Document W 217, Exh. W 199, Book W V, P. 13, Para. 3.

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14) Affidavit (Prosecution Exh. 1347)

"The sanitary conditions of the camp which were all right in the beginning became deplorable towards the end of my stay, there was no running water, no basins,

a) During cross-examination (Engl. P. 3386, German P. 3407) the witness Granot had to admit that the changed conditions towards the end of his stay (end of 1945) were due to air raids, also after the destruction of the

beginning

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Land set up a hose line

no toilets, and the whole was full of vermin".

water pipes, the plant had the water brought to the camp by tank trucks.

- b) Speaking of something else the witness admitted under cross-examination (Engl. P. 3348-49; German P. 3374) that from October or November 1944 on one could no longer talk of any real normal life at Ludwigshafen.

15) Affidavit (Prosecution Exh. 1347)

"From the spring of 1944 on bombardments were of almost daily occurrence".....

(This statement is made by the witness in connection with the allegedly insufficient air raid precautions for the prisoners of war).

Testimony under cross-examination (Engl. P. 3372, German P. 3396):

"I told you already in much detail about the first attack having taken place on the 26th of July, but I have also explained that the real air attacks only took their full rigor in September and October"

(The witness Grenot makes this statement in order to make it appear that the fact, that the French workers were less satisfied in 1944 had allegedly nothing to do with air raids.)

16) Testimony under cross-examination (Engl. P. 3372, German P. 3396):

"When I arrived in 1944 (according to the affidavit it was in May) (at Ludwigshafen) we did not even have a single bomb attack yet. The factory was completely untouched." The witness describes the air raid on 26 July 1944, the "first" one.

as

- a) When asked, the witness had to admit (Engl. P. 3373, German P. 3396) that as early as September 1943 the plant had already had 10 or 12 air raids.

b) Affidavit Josef Mair and Dr. Fritz Mueller, Document W 257, Exh. W 207, Book W V, P. 49, shows that by 26 July 1944 the total number of 34 air raids had caused the plant 90 million marks damage.

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Appendix C

List of Prosecution Exhibits

dealt with
used in the presentation of evidence for Dr. WURSTER,

pages with indication of page numbers of the Transcript and the Trial Brief

Exh. No.	Doc. No.	Doc. Book	Page Engl.	Statement Dr. Wurster Page Engl.	Page German	Trial Brief
127	NI-5666	V	162	11 115/16	11 356	
180	NI-6296	VII	33	10 924/25	11 085)	
181	NI-6297	VII	35	10 924/25	11 086)	
229	EC- 97	VIII	117	10 929 10 951	11 089) 11 111)	
230	NI-7121	VIII	125	10 928	11 089)	
231	NI-7125	VIII	126	10 932	11 092)	
232	NI-7124	VIII	132	10 932	11 092)	16
247	NI-6925	IX	57	10 933	11 093)	
264	NI-2765	IX	112	10 934	11 094)	
267	NI-7136	X	42	10 935	11 096)	
268	NI-7122	X	32	10 932	11 092)	
270	NI-7126	IX	121	10 935	11 096)	
385	NI-10 044	XV	16	10 867	11 058	
391	NI-9487	XV	65			27
392	NI-10 158	XV	125			11
427	EC-281	XXIII	1	10 941	11 101	
463	NI-820	XXI	172	10 942	11 102	28
475	NI-5934	XXII	19	10 942	11 102	28
506	NI-6157	XXIV	101	10 944	11 105	
601	NI-4498	XXIV	18	10 956	11 117	22
602	EC-1A4	XXIV	19	10 950	11 110	23
707	NI-7236	XXVII	26	10 965	11 127	21,25
708	NI-8595	XXVII	104	10 966	11 128	
716	EC-128	XXVIII	94	10 960	11 121	24
748	NI-7129	XXX	82	10 938	11 099	

Exh. No.	Doc. No.	Doc. Book	Page Engl.	Statement Dr. Wurster Page Engl.	Page German	Trial Brief
749	NI-6843	XXXX	85	10 961	11 122	24
750	NI-6728	XXXX	94	10 953	11 113	21
1133	NI-5947	LV	32	11 203	11 372	37
1134	NI-1149	LV	34	10 970	11 133	33-36
1153	NI-8397	LVI	15			38
1161	NI-8400	LVI	29			38
1221	NI-8165	LXI	36	10 966	11 129	38,39,40,41, 42,
1222	NI-8164	LXI	38	10 966	11 129	38,41
1319	NI-4693	LXVIII	31	10 874	11 065	
1335	NI-6285	LXIX	21	10 972 11 007 11 053	11 135 11 173 11 258	49,68
1336	NI-6287	LXIX	25	10 974 11 000 11 002	11 138 11 166 11 168	49
1337	NI-9369	LXIX	30			49
1338	NI-6308	LXIX	33			49
1339	NI-6315	LXIX	36	10 987	11 153	61
1340	NI-6349	LXIX	38	11 009	11 175	56, 61
1341	NI-5916	LXIX	41			49
1342	NI-5915	LXIX	52	11 003	11 169	50,52,56
1343	NI-5912	LXIX	54	11 058	11 264	74
1344	NI-9091	LXIX	57	10 982	11 148	48
1345	NI-9092	LXIX	62	10 984	11 150	49
1346	NI-2831	LXIX	66	11 010 11 074 10 981	11 176 11 314 11 146	50,56
1347	NI-7502	LXIX	67			Appendix 69, Annex B
1348	NI-9372	LXIX	71			62
1376	NI-7110	LXIX	63	10 939/90	11 156	
1557	NI-3761	A LXVIII	11	11 055	11 260	
1568	NI-6730	LXIV	36	10 971	11 134	
1766	NI-12073	LXXII	85			78
1772	NI-12004	LXXII	135			80

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Exh. No.	Doc.No.	Doc. Book	Page Engl.	Statement Dr. Murster Page Engl. Page German	Trial Brief
1777	NI-12 664				81
1778	NI-12 665				78
1919	NI-14 071				29
1940	NI-13 571			10 955 11 116	21
1967	NI-1150				34
2087	NI-12 111				79
2088	NI-15 067				79,81
2116	NI-11 635			11 083 11 120 11 322 11 361	50
2117	NI-6311			11 088 11 107 11 121 11 328 11 346 11 362	50,52,61
2118	NI-14 031			11 088 11 120 11 126 11 329 11 360 11 366	49
2119	NI-15 105			11 093 11 113 11 332 11 363	38,39,40
2120	NI-15 107			11 096 11 124-127 11 200-202 11 336 11 364-368 11 369-371	36
2121	NI-15 060			11 113 11 125 11 353 11 365	
2126	NI-14 524				6
2221	NI-7452				17,18
2256	NI-15 209				49

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NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Roll 101

Target 2

Defense Closing Statement

(German)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Case 6
Defense

ABSCHLIESSENDE AUSFUEHRUNGEN

des Verteidigers

DR. WOLFRAM VON NETZLER

fuer alle Angeklagten in

F a l l 6:

"DIE VEREINIGTEN STAATEN VON AMERIKA

gegen

KRAUCH und Gen."

ueber die allgemeinen Themen

- I. DIE ERHEBLICHKEIT DES BEWEISMATERIALS DER ANLAGEBEHÖRDE

BEZÜGLICH DER PUNKTE I UND V DER ANLAGESCHRIFT.

- II. DIE ALLGEMEINE THEORIE DER VERANTWORTLICHKEIT DER

ANGEKLAGTEN AN DEN ZUR KLAGE STEHENDEN VERBRECHEN.

Gruen



Hohes Gericht,

Nach einer neun Monate wachrenden Verhandlung, die in einer mit Spannung geladenen Atmosphaere stattfand, wie sie sich immer dann in einem Gerichtssaal einzustellen pflegt, wenn Fragen von grosser Tragweite zur Entscheidung stehen, tritt ein gigantischer Prozess in sein Endstadium ein.

Eine ungeheure Flut von Beweismaterial, das sich mit der Teetigkeit eines der grossten Konzerne in der Geschichte der Menschheit befasst, ist von der Prosecution vorgelegt worden. Obwohl die Verteidigung von Beginn dieses Prozesses an der Meinung war und diese Meinung auch jetzt noch aufrecht erhaelt, dass der grosste Teil dieses Beweismaterials unerheblich ist, musste sie sich mit ihm auseinandersetzen und war gezwungen, ihrerseits zahllose Dokumente vorzulegen.

Es ist nun die Aufgabe dieses Hohen Gerichts, dieses gesamte Beweismaterial sowohl auf seine Erheblichkeit wie auf seine Beweiskraft hin zu pruefen. Ihnen, meine Herren Richter, liegt es ob, das Zeugnis der Affianten und Zeugen aller jener menschlichen Schwaechen wie Vor-eingenommenheit, Vorurteil und Furcht zu entkleiden, die ganz natur-gemaess in gewissem Umfange ein solches Zeugnis beeinflussen, wenn po-litische Hassgefuehle in einem Prozess von solcher Bedeutung aufeinander prallen und eine oeffentliche Meinung, die sich noch immer der Schrecknisse des letzten Krieges bewusst ist, ihren Druck auf alle die ausuebt, die Zeugnis ablegen ueber jene furchtbaren Jahre, die fuer lange Zeit - wie wir alle hoffen - ein warnendes Beispiel fuer die le-bende und fuer kuenftige Generationen sein werden.

Die Anwaelte beider Seiten standen in diesen vergangenen Monaten in einem erbitterten Ringen um ihre Positionen. Es ist nun Ihre Auf-gabe, meine Herren Richter, spaeter in der Stille des Beratungszimmers die Waage der Gerechtigkeit in die Hand zu nehmen und, wenn in irgend einem speziellen Falle die Schalen einander annaehernd die Waage halten

sollten, einige Koernchen Milde hineingewerfen, um dem Angeklagten die Wohltat des begruendeten Zweifels zu erweisen.

Um vom Gesichtspunkt der Erheblichkeit aus die ungeheure Menge des von der Anklagebehoerde vorgelegten Beweismaterials zu begrenzen, hat die Verteidigung am 17. Dezember 1947 einen Antrag eingebracht. Darin ersuchte sie um Freispruch unter Punkt I und V der Anklageschrift und um Freispruch von der Anklage der Beraubung in Oesterreich und der Tschechoslowakei und zwar auf Grund der Unerheblichkeit besagten Beweismaterials. Bis jetzt war dieser Antrag nur mit Beziehung auf Beraubung in Oesterreich und der Tschechoslowakei von Erfolg begleitet.

Mit Erlaubnis der Herren Richter und auf Instruktion durch alle Verteidiger werde ich daher noch einmal kurz die Haltung schildern, die die Verteidigung in Bezug auf die Erheblichkeit besagten Beweismaterials fuer die Anklagepunkte I und V einnimmt. Ich spreche in diesem Umfang fuer alle Angeklagten und nicht nur fuer die Angeklagten GAJEWSKI und HAEFLIGER.

Im Interesse der Klarheit moechte ich sagen: Ich habe nicht vor, mich mit dem Beweiswert des sowohl von der Anklage als auch von der Verteidigung in Bezug auf den Punkt I der Anklageschrift Ihnen vorgelegten umfangreichen Beweismaterials zu befassen. Ich will deshalb nicht in eine ins Einzelne gehende Nachpruefung besagten Beweismaterials eintreten. Denn wie wir ergebenst unterstellen, ist es die feste Ueberzeugung der Verteidigung, dass vom juristischen Standpunkt aus und auf Grund der von dem IKG entwickelten Grundsaeetze dieses gesamte Beweismaterial unerheblich ist und

die in den Punkten I und V erhobenen Anklagen nicht stützt. Aus diesen Grunde wird es nach meiner bescheidenen Meinung genuegen, wenn ich die allgemeinen Kategorien besagten Beweismaterials, wie sie in dem Trial Brief der Anklagebehörde gruppiert sind, zusammenfassend bespreche und sie zu den vom IIG in Bezug auf die Verbrechen gegen den Frieden aufgestellten Grundsätzen in Beziehung bringe.

Es mag der Sache wert sein, die Lage, wie sie sich bis jetzt in Bezug auf Anklagen wegen Verbrechen gegen den Frieden in den Muenberger Gerichtshoeften, die deutsche Industrielle vor Gericht gezogen haben, entwickelt hat, gleich am Anfang zu betrachten. Im ersten Fall dieser Art gegen FLICK und Gen. (Fall No. 5) wurde von der Anklagebehörde keine solche Anklage erhoben, obgleich der Flick-Konzern in erheblicher Masse zur deutschen Wiederaufruestung beitrug und einige der Angeklagten im industriellen Leben Deutschlands leitende Stellungen bekleideten.

Im Falle No. 10 gegen KRUPP und Gen. entschied auf einen aehnlichen Antrag der Verteidigung, der vor diesem Gericht eingebracht wurde, das Tribunal Nr. III in seiner Sitzung vom 5. April 1948 (Sitzungsbericht S. 5431), dass das gesamte von der Anklage vorgelegte Beweismaterial in Bezug auf die Anklage wegen Verbrechen gegen den Frieden und wegen der darauf hinielenden Verschwörung unerheblich sei, und sprach deshalb saemtliche Angeklagten von besagten Anklagen frei. Es ist unserer Meinung nach recht bedeutsam, dass ein Muenberger Tribunal hierdurch in Bezug auf die Unvereinbarkeit dieses Beweismaterials mit den im IIG-Urteil entwickelten Grundsätzen den Standpunkt der Verteidigung angenommen hat, unraecht der Tatsache, dass die Angeklagten Industriellen, die

von besagten Anlagen freigesprochen wurden, die Fuehrer eines der groessten Ruestungs-Konzerne Deutschlands waren, der einen wesentlichen Teil der Waffen fuer die Kriegsmaschine der Nazis sowohl vor als auch nach dem Ausbruch des Krieges herstellte und der daher nach einem wohl-bekannten, von Hitler und seinen Gefolgsleuten mehrfach in verschiedenen Reden gebrauchten Schlagwort die "Waffenschmiede des Reiches" genannt wurde.

Ich will nicht, bevor ich mich mit der Erheblichkeit der verschiedenen Gruppen des fuer den Anklagepunkt I von der Anklagebehoerde eingebrachten Beweismaterials befasse, etwa auf die Streitfrage ueber den Rechtsstandpunkt eingehen, von dem aus Verbrechen gegen den Frieden betrachtet werden sollten. Die Streitfrage, ob die Regeln, nach denen dieser Prozess verhandelt werden sollte, dem deutschen Strafgesetz entnommen werden sollten, oder einem Rechtssystem, das sich entweder auf das europaeische Kontinentalgesetz oder auf das allumfassende Voelkerrecht stuetzt, diese Streitfrage kann fuer den Zweck der Auseinandersetzung mit der Spezialfrage, die den Inhalt meiner Ausfuehrungen vor Ihnen bildet, naemlich die Erheblichkeit des Beweismaterials der Anklagebehoerde fuer Punkt I, voellig ausser Acht gelassen werden. Denn, ob es nun das deutsche Strafgesetz oder das europaeische Kontinentalgesetz oder das im IIG-Statut vom 8. August 1945 niedergelegte Voelkerrecht ist, der entscheidende Faktor bei der Beurteilung der strafrechtlichen Verantwortlichkeit der Angelegten im Sinne der Punkte I und V sind die von dem IIG in Bezug auf Verbrechen gegen den Frieden entwickelten Grundsuetze, wie bereits in unserm Antrag vom 10. Dezember 1947 ausinandergesetzt. Insoweit ist die Auslegung des obenewahnten Statuts durch den IIG von hoechster Bedeutung, und sein Urteil

nuss an sich als ein Beitrag zu dem bei Verbrechen gegen den Frieden anzuwendenden Recht angesehen werden.

Es liegt eine gewisse Ironie darin, dass die Anklagebehörde, obwohl sie in verschiedenen Teilen ihres Trialbriefs wiederholt auf das IMG-Urteil als einen wichtigen Präzedenzfall Bezug nimmt, bei der Darlegung ihres Falles in Bezug auf Punkt I und V die vom IMG mit Hinsicht auf die Verbrechen gegen den Frieden aufgestellten Prinzipien vollkommen missachtet hat. Die ganze Verwirrung ist unserer Meinung nach der Tatsache zuzuschreiben, dass die Anklagebehörde ursprünglich die Vorschrift des Artikels II, Ziffer 2 f) des Kontrollratsgesetzes Nr. 10 zu stark betonte; ich zitiere:

"Ohne Rücksicht auf seine Staatsangehörigkeit oder die Eigenschaft, in der er handelte, wird eines Verbrechens nach Massgabe von Ziffer 1 dieses Artikels . . . fuer schuldig erachtet, wer . . . eine gehobene politische, staatliche oder militaerische Stellung . . . in finanziellen, industriellen oder wirtschaftlichen Leben innegehabt hat."

Ende des Zitats.

Wie bereits in unserm Antrag aneinandergesetzt, ist das Kontrollratsgesetz Nr. 10 im Zusammenhang mit dem IMG-Statut erlassen worden, um seine Bestimmungen in die Tat umzusetzen. Deshalb hat die vom IMG besagten Statut gegebene Auslegung auch Anwendung auf die Bestimmungen des Kontrollratsgesetzes Nr. 10, da ja das letztere erlassen worden ist, bevor der IMG sein Urteil abgab.

Nun hat die Anklagebehörde, wie bereits in unserem Antrage nachgewiesen, anscheinend ihre ursprüngliche Theorie aufgegeben, wonach die oben erwähnte Bestimmung des Kontrollratsgesetzes Nr. 10 die Beweislast in Bezug auf die Kenntnis von Hitlers Zielen den Angeklagten auferlegt; sie sagt naemlich auf Seite 3 ihres Vorlaefigen

Trial Briefs, Teil I, r. : - ich zitiere -

"Diese Vorschrift zielt unseres Erachtens nicht darauf ab, alle Inhaber hoher Aemter automatisch mit strafrechtlichen Verschulden zu belasten."

Ende des Zitats.

Es sollte in diesem Zusammenhange vermerkt werden, dass auch das I.M.G.-Urteil die Verantwortung von Geschäftsleuten fuer Verbrechen gegen den Frieden anerkennt:

"Hitler konnte keinen Angriffskrieg allein fuehren. Er benoetigte die Mitarbeit von Staatsmaennern, militaerischen Fuehrern, Diplomaten und Geschäftsleuten. Wenn diese seine Ziele kannten und ihm ihre Mitarbeit gewaehrten, so machten sie sich zu Teilnehmern an dem von ihm ins Leben gerufenen Plan." (I.M.G., deutsch Seite 252/253)

Ende des Zitats.

Es ist daher der Standpunkt der Verteidigung, dass bei der Beurteilung der strafrechtlichen Verantwortlichkeit der Angeklagten fuer die Verbrechen gegen den Frieden die Vorschrift des Artikels II, Abs. 2 f), des Kontrollratsgesetzes Nr. 10 keinen praktischen Wert hat. Die Anklagebehoerde hat durch die Aufgabe ihrer urspruenglichen Theorie, wonach die besagte Vorschrift den Angeklagten die Beweislast auferlegt, und durch Bezugnahme auf Seite 2 ihrer Entgegnung auf den Antrag der Verteidigung - auf die oben erwachte Stelle des I.M.G.-Urteils zu erkennen gegeben, dass auch sie besagter Vorschrift nun keine Bedeutung mehr zumisst.

Es folgt daraus nach Ansicht der Verteidigung, dass die Verantwortlichkeit der Angeklagten fuer Verbrechen gegen den Frieden ausschliesslich nach den im I.M.G.-Urteil fuer die besagten Verbrechen niedergelegten Grundsuetzen beurteilt werden sollte.

Das ganze Problem haengt daher von der Beantwortung der Frage ab, was ist "Kenntnis von Hitlers Zielen" im Sinne

der oben erwähnten Stelle des I.G.-Urteils.

Es ist der Standpunkt der Verteidigung, dass in diesem Prozess viel Zeit hätte gespart werden können, hätte die Anklagebehörde von allem Anfang an dieser Frage, das heisst, der Frage des von IIG fuer die Begehung eines Verbrechens gegen den Frieden geforderten inneren Tatbestandes mehr Aufmerksamkeit geschenkt, bevor sie die unglaublich grosse Menge von Beweismaterial ueber den Umfang der Teilnahme der I.G.-Farben an der deutschen Wiederaufruestung ausschüttete. Unzweifelhaft trug die I.G.-Farben, genau wie alle anderen deutschen Firmen, die sich mit der Fertigung von kriegswichtigen Stoffen befassten, in gewissem Umfange zu der deutschen Aufruestung bei. Ob der Anteil der I.G.-Farben an der deutschen Ruestungsindustrie in ihrem Arbeitsfeld 20, 30, 50 oder 70 % betrug, ist dabei ohne Interesse. Worauf es dabei ankommt, ist: Waren die Angeklagten persoenlich fuer die Foerderung von Hitlers Angriffsplaenen verantwortlich, mit anderen Worten, hatten sie von Hitlers Angriffsabsichten Kenntnis?

Diese Frage sollte daher zuerst und vor allem betrachtet werden, bevor auf die Einzelheiten der Teilnahme der I.G.-Farben bei der Staerkung des deutschen Kriegspotentials eingegangen wird. Um mich der Werte des IIG-Urteils in Buch I, auf Seite 308 zu bedienen: - ich zitiere:

"Aber die Aufruestung an sich ist auch nach dem Statut nicht verbrecherisch. (IIG, Seite 348 deutsch).

Ende des Zitats.

Und in Buch I auf Seite 330 heisst es:

"Seine Taetigkeit - naemlich die des Reichsminister fuer Bewaffnung und Munition Speer - diente, als ihm die deutsche Ruestungsproduktion unterstand, den Kriegsanstrengungen, ebenso wie andere

Produktionsunternehmungen der Kriegsfuehrung gedient haben. Der Gerichtshof ist jedoch nicht der Ansicht, dass eine solche Taetigkeit die Teilnahme an einem auf die Fuehrung von Angriffskriegen im Sinne von Punkt 1 der Anklage gerichteten Plan darstellt, und auch nicht die Fuehrung eines Angriffskrieges gemass Punkt 2 der Anklage bedeutet. (IMG, S 374, deutsch).

Ende des Zitats.

Wenn daher das Schluesselproblem fuer die Punkte I und V der Anklageschrift die Frage ist, was ist Kenntnis von Hitlers Zielen im Lichte der vom IMG entwickelten Grundsaeetze, dann mag es wohl der Muehe wert sein, diese Grundsaeetze kurz darzustellen und sie mit der von der Anklagebehoerde in ihrem Vorlaeufigen Trial Brief ueber den inn'eren Tatbestand angenommenen Theorie zu kontrastieren. Nach Ansicht der Verteidigung steht danach die Theorie der Anklagebehoerde im glatten Gegensatz zu diesen, im IMG-Urteil niedergelegten Grundsuetzen und kann daher nicht als juristisch tragbare Grundlage fuer die Pruefung der strafrechtlichen Verantwortlichkeit der Angeklagten angenommen werden.

Man argumentiert die Anklagebehoerde, der IMG-Fall sei ein anderer Fall und die darin Angeklagten seien Regierungs- und Heeresbeante gewesen, wohingegen die Angeklagten vor diesem Gerichtshof Geschaeftleute seien.

Darauf moechte die Verteidigung erwidern: Die Tatsache, dass die Angeklagten im IMG-Prozess zu den hoechsten Funktionaeren der Regierung und des Heeres des Nazisystems gehoerten, laesst, wenn den Angeklagten auf der Anklagebank Gerechtigkeit zuteil werden soll, nur einen Schluss zu. Bei der Wuerdigung der Frage der strafrechtlichen Verantwortlichkeit dieser Angeklagten, die gewoehnliche Geschaeftleute sind,

kann unzweifelhaft kein strengerer Massstab angelegt werden als in Falle der höchsten Vertreter des Nazi-Systems, die vor dem IIG standen. Will die Anklagebehörde wirklich behaupten, dass die Angeklagten auf dieser Anklagebank von Hitlers Zielen mehr wussten als Männer wie Schacht, von Papen, Speer, Frank, Bormann, die Mitglieder des früheren Reichskabinetts waren, oder Sauckel, Kaltenbrunner, von Schirach, Streicher und Fritzsche, die Schlüsselstellungen in der Regierung des früheren Reiches bekleideten und die alle vom IIG von der Anklage der Begehung eines Verbrechens gegen den Frieden freigesprochen wurden? Es ist unvorstellbar, und doch nimmt die Anklagebehörde anscheinend diese Stellung ein, die unserer Meinung nach mit den Grundsätzen von Recht und Gerechtigkeit unvereinbar ist.

Die vom IIG ueber die Frage, was Kenntnis von Hitlers Angriffszielen darstellt, in diesem Zusammenhang entwickelte Theorie ist kurz zusammengefasst folgende:

Wie es sich aus den Gruenden fuer den Freispruch der IIG-Angeklagten Schacht und Speer, die beide in hoher Masse fuer die deutsche Aufruestung vor und nach Ausbruch des Krieges verantwortlich waren, ergibt, ist die Aufruestung an sich noch kein Verbrechen gegen den Frieden. Deshalb kann aus der Teilnahme an Deutschlands Aufruestung, so gross sie auch gewesen sein mag, noch kein Schluss auf die Kenntnis von Hitlers Angriffsplaenen gezogen werden.

"Kenntnis von Hitlers Angriffszielen" ist nach dem IIG-Urteil nicht mit der all gemein verbreiteten Kenntnis, was Hitler tun oder lassen koenne, identisch. Es ist die besondere

Kenntnis bestimmter Angriffspläne, die Hitler einem bestimmten, begrenzten Kreise seiner engsten Ratgeber hauptsächlich in vier geheimen Konferenzen, die am 5. November 1937, 23. Mai 1939, 22. August 1939 und 23. November 1939 stattfanden, enthielten. Deshalb sind die oben erwähnten im IIG-Fall Angeklagten, weil sie über diese bestimmten Pläne nicht informiert waren, freigesprochen worden.

Der Grund, warum der IIG in der oben beschriebenen Weise die Verantwortlichkeit für Verbrechen gegen den Frieden eingrenzte, kann aus der folgenden Stelle von Buch 1, Seite 265 entnommen werden:

"Dieses Ermessen ist richterlicher Natur und gestattet kein willkürliches Vorgehen; es muss in Einklang mit anerkannten Rechtsgrundsätzen ausgeübt werden. Einer der wichtigsten dieser Rechtsgrundsätze besteht darin, dass strafrechtliche Schuld eine persönliche ist, und dass Massenbestrafungen vermieden werden sollen." (IIG - S.267, deutsch)

Ende des Zitats.

In der Tat, wenn der für ein Verbrechen gegen den Frieden nötige innere Tatbestand nach solch unbestimmten Gründen beurteilt würde, wie die Anklagebehörde sie vorbringt, dann würde es kaum eine vernünftige Begrenzung des Kreises der für solche Verbrechen in Deutschland verantwortlichen Menschengruppe geben und würde zu dem führen, was nach dem IIG-Urteil vermieden werden sollte, nämlich zur Massenbestrafung. Denn selbst die Anklagebehörde kann nicht abstreiten, dass außer der IG Farben zahlreiche andere deutsche Firmen und Einzelpersonen zur Stärkung des deutschen Kriegspotenzials beitrugen und dass die Kenntnis davon, dass Deutschland ein Aufrüstungsprogramm durchführe, sich nicht auf die hier auf der Anklagebank Sitzenden beschränkte.

In Gegensatz zu dieser klaren und genauen Auslegung dessen, was "Kenntnis von Hitlers Angriffsplänen" darstellt, die

vom IIG aufgestellt wurde, ist die Theorie der Anklagebehörde in Bezug auf den fuer ein Verbrechen gegen den Frieden noetigen inneren Tatbestand ausserst vage und mit den oben auseinandergesetzten Prinzipien des IIG-Urteils nicht zu vereinbaren. Ich zitiere von S. 10 des Vorlaeufigen Trial Briefs der Anklagebehörde, Teil I:

"Es ist dies die Kenntnis, dass eine solche militaerische Macht zum Zweck der Durchfuhrung einer nationalen Politik der Ausdehnung verwendet worden wird, um der Bevoelkerung anderer Laender ihr Land, ihr Eigentum oder ihre persoenliche Freiheit zu nehmen. Es genuegt der Glaube, dass durch die Bedrohung mit der militaerischen Macht dieser Zweck erreicht werden wird, obwohl, wenn noetig, diese Machtmittel auch tatsaechlich angewendet werden wuerden.

Und es ist nicht wesentlich, dass die Angeklagten genau wussten, welches Land das erste Opfer sein wuerde oder die genaue Zeit, in der die Eigentumsrechte und die persoenliche Freiheit der Bevoelkerung irgendeines bestimmten Landes angegriffen werden wird. Es genuegt, dass die Angeklagten wussten, dass die militaerische Macht unter den angegebenen Umstaenden fuer den Zweck benutzt wird, der Bevoelkerung anderer Laender ihnen gehoeriges wegzunehmen."

Ende des Zitats.

Nun ist die Frage, die, wie ich ergebenst unterstelle, Sie, meine Herren Richter, sich spaeter im Beratungszimmer vorzulegen haben werden, die folgende: Kann ein irgendwie begruendeter Zweifel darueber bestehen, dass alle vom IIG von der Anklage des Verbrechens gegen den Frieden freigesprochenen Angeklagten unter Beruecksichtigung ihrer Stellung im Nazi-Regime zum mindesten die vage Kenntnis hatten, die nach der Anklagebehörde genuegt, um jemanden im Sinne eines Verbrechens gegen den Frieden fuer schuldig zu finden. Es ist die Ansicht der Verteidigung, dass kein solcher Zweifel bestehen kann, dass daher - wenn die Zwecke der Justiz erfuellt werden sollen, - der innere Tatbestand in diesem Fall nicht nach der oben beschriebenen Theorie der Verteidigung beurteilt werden kann.

Ausserdem kann kein Zweifel darueber bestehen, dass diese Theorie, wenn sie angenommen wuerde, unweigerlich zu einer Massenbestrafung fuehren wuerde, die nach dem IMG-Urteil zu vermeiden ist.

All dies wird besonders klar, wenn man der von der Anklagebehörde in ihrem Vorläufigen Trial Brief, Teil I, unter dem Titel "Innerer Tatbestand" (state of mind) eingeschlagenen Argumentation folgt. Auf Seite 87 ff. nimmt die Anklagebehörde Bezug auf das Nazi-Programm und auf Hitlers Buch "Mein Kampf". Auf Seite 89 ff. schildert sie die politischen Ereignisse in Deutschland von 1932 bis zum Ausbruch des Krieges und sagt auf Seite 77, ich zitiere:

"Wenn man sie im Lichte der politischen Ereignisse, die waehrend dieses Zeitraumes vor sich gingen, betrachtet, so steht die geistige Einstellung dieser Angeklagten ausser Zweifel."

Ende des Zitats.

Und auf Seite 89 sagt die Anklagebehörde weiter, ich zitiere:

"Aber selbst wenn man die menschliche Leichtgläubigkeit und Gleichgültigkeit in Betracht zieht, so ist der Schluss unumgaenglich, dass eine lange Zeit vor dem Angriff auf Polen und lange vor dem Einfall in Oesterreich und in die Tschechoslowakei alle hochgestellten Beamten des Dritten Reiches und alle einflussreichen Leute, die mit ihnen in Geschaeftsverbindung standen, und denen offizielle Informationen und Meinungen zugaeuglich waren, gewusst haben mussten, dass das Nazi-Expansions-Programm durchgefuehrt werden wuerde, selbst wenn es Krieg bedeuten wuerde, obwohl sie vielleicht nicht wussten, zu welchem genauen Zeitpunkt oder auf welche Weise er ausbrechen werde."

Ende des Zitats.

Schliesslich sagt sie auf Seite 99, ich zitiere:

"Das Wahnsinnige Tempo der deutschen Aufruestung, die Ereignisse der juengsten Monate und die weithin propagierten Ziele der Nazi-Partei machten die Zukunft nur zu deutlich. Wenn vor 1939 noch irgendein Zweifel bestand, so konnten nach dem Einzug der Wehrmacht in Prag keine Zweifel mehr darueber bestehen, dass das Dritte Reich zum Krieg bereit war."

Ende des Zitats.

Wenn man diese Argumentation der Anklagebehörde auf die Männer anwendet, die vom IMB von der Anklage der Begehung eines Verbrechens gegen den Frieden freigesprochen wurden, dann kann, meiner bescheidenen Meinung nach, nicht der geringste Zweifel daran bestehen, dass alle diese Männer nach der von der Anklagebehörde in diesem Fall vorgebrachten Theorie hätten verurteilt werden sollen, weil sie ja alle unzweifelhaft von den im obenerwähnten Teil des Trial Briefs der Anklagebehörde behandelten politischen Ereignissen Kenntnis hatten. Und es sollte ausserdem klar sein, dass auf Grund der obenerwähnten Ausführungen der Anklagebehörde ihre Theorie unweigerlich zur Massenbestrafung führen würde.

Es ist daher der Standpunkt der Verteidigung, dass die Theorie der Anklagebehörde ueber den inneren Tatbestand in Bezug auf ein Verbrechen gegen den Frieden und ihre unter diesem Titel in ihrem Trial Brief vorgebrachte Argumentation fuer den Zweck der Beurteilung der tatsächlichen Verantwortlichkeit dieser Angeklagten falsch und juristisch schlecht fundiert ist.

Es ist hoechst interessant festzustellen, dass die Anklagebehörde selbst sich mit ihrer Theorie nicht auf sicheren Boden zu fuehlen scheint. Waehrend sie in dem Vorlaeufigen Trial Brief der Propaganda fuer das Programm und die Ziele der Hitler-Bewegung grossen Raum gibt, macht sie in ihrer Antwort auf den Antrag der Verteidigung vom 17. Dezember 1947 in Absatz 10 die folgende bezeichnende Aeusserung:

"Es genuegt hier, festzustellen, dass die Anklagebehörde nicht behauptet, dass die weite Verbreitung, die dem Programm und den Zielen der Hitlerbewegung waehrend einer Reihe von Jahren gegeben wurde, an und fuer sich genuegt, um ueber einen vernuenftigen Zweifel hinaus nachzuweisen, dass der Durchschnittsmensch in Deutschland die erforderliche Kenntnis besass. Und das Beweismaterial muss mehr dartun

als die Kenntnis von dem Angriffsprogramm und den Zielen der Nazi-Regierung und den Glauben, dass eine Möglichkeit bestehe, dass zur Durchführung der Ausdehnungspolitik Gewalt angewendet worden wurde."

Ende des Zitats.

Ich moechte sagen, diese recht schwankende Haltung der Anklagebehoerde ueber das zum Nachweis der Kenntnis von Hitlers Angriffszielen Wesentliche spricht fuer sich selbst.

Nun argumentiert die Anklagebehoerde, die Angeklagten seien nicht bloss gewoehnliche Geschaeftsloute gewesen, sondern hatten in der deutschen Verwaltung antliche Stellungen bekleidet; deshalb hatten nach der Meinung der Anklagebehoerde die Angeklagten wegen dieser Stellungen bessere Kenntnis von Hitlers Zielen als gewoehnliche Geschaeftsloute. Die Anklagebehoerde unterliess es jedoch, fuer diese Behauptung, die ebenso Frage ist wie die anderen Teile ihrer Theorie ueber den inneren Tatbestand, irgendwelches Beweismaterial anzubieten. Wer koennte ausserdem bestreiten, dass die von einigen der Angeklagten in der deutschen Wirtschaftsverwaltung bekleideten antlichen und halbantlichen Stellungen, einschliesslich der Stellung des Angeklagten KRAUCH im Rahmen des Vier-Jahres-Planes, nicht die Stufe der von den IMG-Angeklagten, die doch von der Anklage der Begehung eines Verbrechens gegen den Frieden freigesprochen wurden, bekleideten Stellungen nicht erreicht.

Ausserdem bringt die Anklagebehoerde vor, dass es nach dem Ausbruch des Krieges am 1. September 1939 ausser aller Frage zu stehen schien, dass die Angeklagten vom aggressiven Charakter dieses Krieges wussten. Wiederum hat die Anklagebehoerde zum Nachweis dieser Behauptung keine Beweise beigebracht und wiederum steht die Haltung der Anklagebehoerde in diesem Punkt im glatten Gegensatz zu den

in IMG-Urteil niedergelegt^{an} Grundsätzen. Ich darf mich in diesem Zusammenhang noch einmal auf die Freisprechung des IMG-Angeklagten Speer beziehen, der der verantwortliche Minister fuer Ruestung und Munition war, und auf jenen Teil der Begrueudung zu seinem Freispruch, auf den mich zu beziehen ich vor einigen Augenblicken mir die Freiheit nehm. Wenn der IMG die Taetigkeit des Angeklagten Speer trotz der Tatsache, dass er die gesamte deutsche Aufrueistung leitete, nicht als ein Verbrechen gegen den Frieden erachtete, dann sollte es klar sein, dass diese Angeklagten, die keine der von Speer bekleideten Stellung gleiche Stellung innehatten, nicht deshalb schuldhaft verstrickt gewesen sein koennen, weil die Produktion der IG Farben nach dem Ausbruch des Krieges der Vergroesserung der deutschen Wehrkraft diente. Wenn der IMG den Angeklagten Speer freisprach, dann nahm er sicherlich nicht an, dass er von dem agressiven Charakter des Krieges nach seinem Ausbruch bestimmte Kenntniss hatte.

Nun bringt die Anklagebehoerde vor, dass Speer erst, nachdem alle Angriffshandlungen Hitlers begonnen und in Ausfuehrung begriffen waren, Minister fuer Ruestung und Munition wurde. Dieses Vorbringen der Anklagebehoerde tut jedoch der Staerke des Argumentes der Verteidigung keinen Abbruch. Das Verbrechen der Teilnahme an der Fuehrung eines Angriffskrieges besteht bis zum Ende eines solchen Krieges. Es kann daher nichts ausmachen, ob der eigentliche Angriff bereits begonnen hatte und in Ausfuehrung begriffen war, als Speer der fuer die Aufrueistung verantwortliche Minister wurde.

Ausserdem moechte ich darauf hinweisen, dass - vielleicht ausgenommen den Angeklagten Schacht - alle von IMG von der Anklage der Begehung eines Verbrechens gegen den Frieden freigesprochenen IMG-Angeklagten

auch nach dem Ausbruch des Krieges wichtige Verwaltungsstellungen bekleideten und trotzdem nicht schuldig befunden wurden, einen Angriffskrieg geführt zu haben.

Die Anklagebehörde hat weiterhin vorgebracht, dass die freigesprochenen IKG-Angeklagten nicht in selbiger Masse an der Vorbereitung und Föhrung des Angriffskrieges teilnahmen wie diese Angeklagten und dass der Grund fuer den Freispruch das unbedeutende Ausmass ihrer Teilnahme war.

Darauf moechte die Verteidigung nur das Folgende erwidern: Wenn die Anklagebehörde behauptet, dass irgendeiner der Angeklagten an der Vorbereitung und Föhrung des Angriffskrieges in hoeherer Masse teilnahm als ein frueheres Mitglied des Reichskabinetts oder als ein Mann, der unter dem Nazi-System, das, wie die Anklagebehörde sagt, in allen Teilen auf die Ausföhrung einer Politik der nationalen Vergrösserung hinarbeitete, eine Schlüssellstellung in der Verwaltung innehatte, dann zeigt eine solche Theorie unzweideutig, dass die Anklagebehörde keine Ahnung davon hat, was, in Vergleich sogar mit einem prominenten Geschaeftsmann, ein hoher Regierungsbeamter im Dritten Reich bei der Synchronisierung der Anstrengungen und Arbeiten des deutschen Volkes mit den Zielen der Nazi-Politik fuer einen Einfluss ausuebte.

Ihre ebenerwachten Argumente, zusammenfassend moechte die Verteidigung deshalb sagen, dass die Anklagebehörde zum Nachweis des auf das Verbrechen gerichteten Vorsatzes der Angeklagten unter Punkt I und V der Anklageschrift gemaess den vom IKG entwickelten Grundsuetzen zeigen muss, dass jeder der Angeklagten ueber bestimmte Angriffsplaene Hitlers, die bei ihnen keinen Zweifel mehr

ueber den aggressiven Charakter dieses Krieges uebrig liessen, informiert war. Nur dann wuerde das von der Anklagebehoerde vorgelegte Beweismaterial ueber jeden vernuenftigen Zweifel hinaus schluessig sein und wuerde die Anklagebehoerde den Schuldnachweis erbracht haben.

In diesem Zusammenhange moechte die Verteidigung darauf hinweisen, dass es natuerlich nicht noetig ist, zu beweisen, dass irgendeiner der Angeklagten an jenen geheimen Zusammenkuenften, in denen Hitler seinen engsten Ratgebern seine Angriffsplaene enthuelte, teilgenommen hat. Auf das Verbrechen gerichteter Vorsatz der Angeklagten ist schon als gegeben anzusehen, wenn nachgewiesen wird, dass sie auf irgend eine andere Weise von diesen Plaenen Kenntnis erhielten.

Unzweifelhaft hat die Anklagebehoerde keinen direkten Beweis fuer eine derart erlangte Kenntnis vonseiten der Angeklagten geliefert.

Dass die politischen Ereignisse und ihre Kenntnis, die in Vorlaeufigen Trial Brief, Teil I, der Anklagebehoerde unter dem Titel "Innerer Tatbestand" erwaeht sind, keinen solchen Beweis darstellen, ist bereits gezeigt worden.

Die einzige zu behandelnde Frage ist daher, ob die Masse des von der Anklagebehoerde ueber die Taetigkeit der IG Farben vor und nach dem Ausbruch des Krieges vorgelegten Beweismaterials ueber jeden begruendeten Zweifel hinaus den Schluss rechtfertigt, dass die Angeklagten von Hitlers Angriffsplaenen die obenerwaehnte Kenntnis hatten; in andern Worten, ob dieser von der Anklage vorgelegte Beweis ueber jeden begruendeten Zweifel hinaus als Indizienbeweis fuer eine solche Kenntnis angesehen werden kann.

Wir sind uns alle eines bei allen zivilisierten Voelkern waltenden Geistes des Gesetzes bewusst, der seinen Ausdruck in von der gesamten zivilisierten Welt anerkannten Grundsuetzen findet. Unter diesen Grundsuetzen

befinden sich die folgenden Regeln ueber den Schuldnachweis eines Angeklagten in einem Strafprozess:

- Eins: Ohne Nachweis der persoenlichen Schuld kann es keinen Schuldspruch geben.
- Zwei: Die Schuld muss ueber jeden begruendeten Zweifel hinaus bewiesen sein.
- Drei: Durch den ganzen Prozess hindurch folgt dem Angeklagten die Annahme seiner Unschuld.
- Vier: Zu allen Zeiten liegt die Last des Beweises auf der Anklage.
- Fuenf: Wenn aus glaubwuerdigen Beweismaterial zwei Schluesse gezogen werden koennen, der eine auf Schuld, der andere auf Unschuld, dann muss der letztere Schluss gezogen werden.

Nach der Auffassung der Verteidigung stellt das gesamte von der Anklage ueber die Taetigkeit der IG Farben vorgelegte Beweismaterial nach den oben dargelegten Regeln keinen solchen Indizienbeweis dar, der ueber jeden begruendeten Zweifel hinaus die Behauptung erhaertet, dass irgendeiner der Angeklagten von bestimmten Angriffsplaenen Kenntnis hatte.

Deshalb wird es, wie bereits am Beginn meiner Darlegungen hervorgehoben worden ist, genuegen, wenn ich mich mit den verschiedenen Kategorien des Beweismaterials der Anklage ueber die Taetigkeit der IG Farben in summarischer Weise befasse. Ich will an diese Aufgabe nun herantreten.

Da ist zu allererst die finanzielle Unterstuetzung Hitlers und der Nazi-Partei durch die IG. Es ist wohl bekannt, dass die gesamte deutsche Industrie sowie zahlreiche deutsche Buerger verschiedenen Nazi-Parteistellen Zuwendungen machten und dass diese Zuwendungen Teil eines von jener Partei ausgearbeiteten und organisierten Systems waren. Dass sich daraus eine Kenntnis von Hitlers Angriffsplaenen herleite, ist eine ganz indiskutable Behauptung.

Darauf folgt dann die grosse Menge Beweismaterials, das von der Zusammenarbeit der IG Farben mit der deutschen Armee handelt. In Bezug auf diese Gruppe des Beweismaterials sowohl als auch in Bezug auf die anderen Gruppen, die von der Schaffung und Ausruestung der Nazi-Kriegsmaschine handeln, moechte die Verteidigung das Tribunal ergebenst bitten, die Tatsache nicht aus den Augen zu lassen, dass heute wegen der Kenntnis, die wir nun von diesen Ereignissen haben, alle solche Taetigkeiten in einem anderen Lichte erscheinen koennten. Man muss sich deshalb in die Lage eines Beobachters versetzen, der vor dem Ausbruch des Krieges lebte, bevor man Taetigkeiten, die zu jener Zeit stattfanden, beurteilen kann.

Undann liegt noch ein weiterer Punkt vor, der dabei von aeusserster Wichtigkeit ist und der nach der Meinung der Verteidigung aufs aeusserste vernachlaessigt worden ist. Es genuegt nicht, dass die Anklage den Angeklagten nachweist, sie haetten gewusst, dass Hitler einen Krieg vorbereitete, die Anklage muss den Angeklagten nachweisen, sie haetten gewusst, dass Hitler einen Angriffskrieg vorbereitete. Die Verteidigung ist der Meinung, dass ein Grossteil der Verwirrung ueber die Erheblichkeit des Beweismaterials der Anklage ueber den Punkt I der Tatsache zuzuschreiben ist, dass die Anklage bei der Unterbreitung ihres Materials diesen Punkte nicht genuegend Aufmerksamkeit schenkte.

Im Lichte dieser Ausfuehrungen beweist das von der Anklagebehoerde unter dem Titel "Zusammenarbeit mit der Wehrmacht" vorgelegte Material nicht ueber jeden begruendeten Zweifel hinaus, dass irgendeiner der Angeklagten von bestimmten Angriffsplaenen Hitlers Kenntnis hatte.
Errichtung und Betrieb der Vermittlungsstelle W

- worauf die Anklage bei der Beweisaufnahme soviel Zeit verwendete - die Zusammenarbeit zwischen IG Farben und dem Heer auf den Gebieten der Erfindungen und Forschung, die Abhaltung von Kartenleserübungen und Kriegsspielen, die Ausarbeitung von Mobilisierungsplänen, der Abschluss von Kriegslieferungs-Verträgen, diese gesamte Tätigkeit rechtfertigt nicht ueber jeden begruendeten Zweifel hinaus den Schluss, dass jeder von den Angeklagten wusste, ein Angriffskrieg stünde bevor. Diese Tätigkeit, die ausserdem sich nicht auf die IG Farben allein beschränkte, sondern durch regierungsseitige Anordnungen die gesamte deutsche Industrie erfasste, kann auch vom Standpunkt der Vorbereitung fuer einen Verteidigungskrieg aus gesehen werden, oder sie kann auch im Lichte der wohlbekannten politischen Theorie vom "Gleichgewicht der Krafte" als Versuch betrachtet werden, Deutschland auf dem Gebiete der auswaertigen Politik eine staerkere Stellung zu verschaffen.

Dem folgt nun das unter dem Titel "Vierjahresplan und Deutschlands wirtschaftliche Mobilisierung fuer den Krieg" vorgelegte Beweismaterial. Wiederum kann hier das gesagt werden, was schon oben in Bezug auf die Zusammenarbeit der IG Farben mit der Wehrmacht vorgelegte Beweismaterial gesagt worden ist. Das in Bezug auf diese Tätigkeit der Angeklagten im Rahmen des Vierjahresplanes beigebrachte Beweismaterial stuetzt nicht ueber jeden begruendeten Zweifel hinaus die Behauptung, dass irgendeiner der Angeklagten von den Angriffsplänen Hitlers Kenntnis hatte. Die Existenz und die Fuehrung des Vierjahresplanes war der deutschen Oeffentlichkeit wohl bekannt. Das Antarkia-Programm war damals in zahlreichen Zeitungsartikeln und oeffentlichen Reden eroertert worden. Selbst wenn einige der Angeklagten wirklich von den Einzelheiten des Planes, soweit sie ihr Produktionsgebiet angingen, naechere Kenntnis hatten, laesst dies doch nicht ueber jeden begruendeten Zweifel die Schlussfolgerung zu, dass sie wussten, der Vierjahresplan werde

zwecks Vorbereitung eines Angriffskrieges durchgeführt.

Dasselbe trifft auch in Bezug auf die unglaublich grosse Menge des von der Anklage unter dem Titel "Schaffung und Ausrüstung des Nazi-Kriegsapparates" beigebrachten Beweismaterials zu.

Auf Seite 26 ihres vorläufigen Trial Briefs, Teil I, erklärt die Anklagebehörde das Folgende: - ich zitiere -

"Man wird auf Grund der Art der erzeugten Produkte und der Tatsache, dass die Verträge und Verhandlungen hauptsächlich mit militärischen Stellen getätigt wurden, erkennen können, dass die Angeklagten wussten, dass diese Produktion der Schaffung des Kriegsapparates der Nazis dienen sollte. Uebrigens waren die Produktionsmengen und die die Erzeugung begleitenden Umstände, besonders die zeitliche Festlegung der nachfolgenden Beschleunigung in der Produktionsplanung und die Tatsache, dass die Militärmacht, die Deutschland aufbaute, die ihrer Nachbarn weit ueberschritt, solcherart, dass die Angeklagten sich dessen bewusst sein mussten, dass der Kriegsapparat der wohlbekannten nationalen Expansionspolitik dienen wollte."

Ende des Zitats.

Darauf moechte die Verteidigung erwidern, dass die Anklage keinen Beweis fuer die Behauptung erbracht hat, dass irgendeiner der Angeklagten ueber sein von ihm geleitetes Sondergebiet hinaus Kenntnis von irgendwelchen Angaben hatte, die es ihm ermoeglichten, die zeitliche Abstimmung, die Beschleunigung und das Ausmass der gesamten deutschen Produktion an wehrwichtigem Material zu uebersehen. Nur in diesem Falle haetten die Angeklagten, - um die Worte der Anklage zu wiederholen, - Kenntnis von der Tatsache haben koennen, dass die Militaermacht, die Deutschland aufbaute, die seiner Nachbarn bei weitem uebertraf. Die Tatsache, dass in Wirklichkeit die deutsche Militaermacht die seiner Nachbarn nicht bei weitem uebertraf, kann daher hier ausser Acht gelassen werden.

Ebenso ist die Behauptung der Anklage, dass die Geschaeftse in all diesen Erzeugnissen der IG Farben, die auf Seite 27 bis 41 ihres vorläufigen Trial Briefs, Teil I, erwahnt werden, hauptsächlich mit dem Militaer getätigt wurden, nicht bewiesen worden.

Die Verteidigung moechte deshalb sagen, dass der Produktionsanstieg an kriegswichtigen Stoffen in ganz Deutschland keinen sicheren Schluss auf das Vorliegen der auf ein Verbrechen gerichteten Absicht im Sinne der Punkte I und V der Anklageschrift rechtfertigt.

Dieselben Ausfuehrungen lassen sich genau so gut auf die Errichtung der sogenannten Reservefabriken und die Aufstapelung kriegswichtigen Materials anwenden, und sie sind gleichfalls gueltig in Bezug auf das von der Anklage unter dem Titel "Verwendung internationaler Abkommen zur Schwachung von Deutschlands moeglichen Feinden" beigebrachte Beweismaterial. Wenn man selbst zugibt, dass die Taetigkeit der IG Farben auf diesem Gebiet wirklich in der von der Anklage beschriebenen Form stattfand, wurde dies doch wieder nicht ueber jeden begruendeten Zweifel hinaus den Schluss rechtfertigen, dass die bestimmten, von der Anklagebehoerde damit in Verbindung gebrachten Angeklagten wussten, dass diese Massregeln zum Zwecke der Vorbereitung eines Angriffskrieges ergriffen wurden. Denn es ist eine allgemein bekannte Tatsache, dass zu Zeiten politischer Spannung Reservefabriken errichtet, kriegswichtiges Material aufgestapelt und der Austausch technischer Informationen bezueglich der Industrien verschiedener Laender gewissen Einschränkungen unterworfen wird. Wie konnten die Angeklagten wissen, die diese von der deutschen Regierung angeordneten Massregeln Schritte auf dem Wege zum Angriffskriege und nicht lediglich Vorsichtsmassregeln fuer den Fall eines Verteidigungskrieges waren?

Dasselbe trifft auch zu in Bezug auf das Beweismaterial, das von der Anklagebehoerde unter dem Titel "Propaganda, Nachrichtenwesen und Spionage" vorgelegt worden ist. Wenn die Kenntnis des Naziprogramms selbst nach der Meinung der Anklage nicht gleichbedeutend ist mit einer Kenntnis von Hitlers Angriffsplaenen, die derart beschaffen ist

dass sie einen Schuldspruch wegen Begehung eines Verbrechens gegen den Frieden rechtfertigt, wie kann dann eine Propaganda, die das Naziprogramm in Ausland verbreitete, den sicheren Schluss auf die auf das Verbrechen gerichtete Absicht der Angeklagten im Sinne der Punkte I und V rechtfertigen? Ein solcher Schluss kann auch nicht aus der Teilnahme an Handlungen auf dem Gebiete des Nachrichten- und Spionagewesens von Seiten irgendeines der Angeklagten gezogen werden. Diese Tätigkeit fällt in dieselbe Kategorie wie die Ausrüstung des Nazikriegsapparats und kann daher nicht ausschliesslich in Lichte der Vorbereitung eines Angriffskrieges gesehen werden.

Was das Beweismaterial anlangt, das von der Anklage unter dem Titel "Schutz und Ausbreitung des IG Farben-Imperiums durch Ausplünderung und Sklaverei als Teil der Vorbereitung und Föhrung von Angriffskriegen und Einfällen" vorgelegt worden ist, so rechtfertigt das gesamte auf die Tarnungstätigkeit der IG bezügliche Material ebenfalls nicht den Schluss auf eine Kenntnis der Angeklagten von Hitlers Angriffszielen. Selbst wenn man zugibt, dass eine solche Tätigkeit stattfand, so muss sie in Lichte der politischen Spannung zur Zeit der Sudetenkrise, als sie nach der Ansicht der Anklagebehörde in Angriff genommen wurde, betrachtet werden. Deshalb können sie genau so gut als Vorsichtsmassregeln, wenn Deutschland in einen Verteidigungskrieg verwickelt werden sollte, verstanden werden.

Auch das von der Anklage in Bezug auf Akte von Plünderung und Bereubung vorgelegte Material kann nicht als Beweis dafür herangezogen werden, dass irgendeiner der Angeklagten von Hitlers Angriffsplänen Kenntnis hatte, und zwar aus denselben, oben in Bezug auf die Herstellung von Kriegsmaterial durch die I.G. nach dem Ausbruch des Krieges angeführten Gründen. Auf Seite 72 des Vorläufigen Trial Briefs, Teil I,

erklärte die Anklagebehörde, dass besagte Handlungen begangen worden seien, um "das Regierungsprogramm auf Einbau dieser Industrie in die gewerbliche Wirtschaft zu fördern und die Hilfsquellen der eroberten Länder bei der Ausführung der Angriffskriege und bei der Vorbereitung für den nächsten einzusetzen". Deshalb müssen die Raubhandlungen, selbst wenn sie wirklich stattgefunden haben sollten, in diesem Zusammenhang, nämlich unter Punkt I der Anklageschrift, in selbem Lichte betrachtet werden wie die Herstellung von Kriegsmaterial nach Ausbruch des Krieges zum Zwecke der Förderung von Deutschlands Kriegspotential. Denn wenn der IIG in diesem Zusammenhang den Angeklagten Speer als den verantwortlichen Minister für Bewaffnung und Munition deshalb freisprach, weil seine Tätigkeit sowohl als auch die Herstellung von Kriegsmaterial kein Verbrechen gegen den Frieden darstellen, dann muss mit Bezug auf die von der IG Farben angeblich begangenen Raubakte, die nach der Meinung der Anklagebehörde aus demselben Grunde begangen worden sind, nämlich zur Förderung des deutschen Kriegspotentials, dasselbe gesagt werden.

Dasselbe gilt auch von der letzten Gruppe des Beweismaterials, das von der Anklage unter Punkt I vorgelegt worden ist, nämlich der Teilnahme der IG Farben an sogenannten Sklavenarbeitsprogrammen. Der Zweck dieser Tätigkeit wird von der Anklage auf Seite 72 ihres vorläufigen Trial Briefs, Teil I, wie folgt beschrieben, ich zitiere:

"Auch der Einsatz der Sklavenarbeit durch die I.G. hat diese doppelte Seite. Er ermöglichte der I.G., nicht nur neue Fabriken zu errichten und durch die vergrößerte Produktion gewaltige Profite zu machen, sondern dieser selbe Bau neuer Fabriken und die Vergrößerung der Produktion stellten wiederum einen wichtigen Teil der Vorbereitung und Föhrung der Angriffskriege dar.

Ende des Zitats.

Deshalb finden die oben über die Raubhandlungen gemachten Ausführungen auch auf

die Teilnahme der IG Farben am Sklavenerbeitsprogramm Anwendung.

Wenn man das gesamte von der Anklage zum Punkte I vorgelegte Beweismaterial durchsieht, ist daher nach der Auffassung der Verteidigung nur der eine Schluss moeglich, naemlich, dass das Beweismaterial nicht ueber jeden begruendeten Zweifel hinaus zeigt, dass die Angeklagten von Hitlers Angriffszielen im Sinne des IIG-Urteils Kenntnis hatten.

Im Einklang mit den obigen Ausfuehrungen sollten auch, wie wir ergebenst unterbreiten, die saentlichen Angeklagten unter Punkt V der Anklageschrift freigesprochen werden. Denn wenn die Anklage nicht ueber jeden begruendeten Zweifel hinaus eine Kenntnis von Seiten der Angeklagten von Hitlers Angriffsplaenen nachgewiesen hat, dann kommt natuerlich eine darauf hinielende Verschwörung gar nicht in Frage. Es ist dabei sehr bezeichnend, dass die Anklage ueber diese Verschwörung keinen direkten Beweis beigebracht hat. Es ist in ihrem Vorlaeufigen Trial Brief, Teil V, kein einziges Beweisstueck erwachnt. Sie argumentiert nur in einer allgemeinen und vagen Weise durch Hinweise auf Entscheidungen des amerikanischen Supreme Court in Faellen, die mit dem vorliegenden Fall nichts zu tun haben. Wiederum laesst die Anklage voellig ausser Acht, was das IIG-Urteil ueber die Erfordernisse einer Anklage auf Verschwörung gesagt hat. Ich darf das folgende Zitat aus dem IIG-Urteil, Buch No. I, Seite 225, anfuehren, ich zitiere:

"Die Anklagebehörde sagt dem Sinne nach, dass jede bedoutsame Beteiligung an den Angelegenheiten der Nazi-Partei oder der Regierung einen Beweis fuer die Beteiligung an einer an und fuer sich schon verbrecherischen Verschwörung darstelle. Der Begriff der Verschwörung ist im Statut nicht definiert. Doch muss nach Ansicht des Gerichtshofes die Verschwörung in Bezug auf ihre verbrecherischen Absichten deutlich gekennzeichnet sein. Sie darf

vom Entschluss und von der Tat zeitlich nicht zu weit entfernt sein. Soll das Planen als verbrecherisch bezeichnet werden, so kann das nicht allein von dem in einem Parteiprogramm enthaltenen Erklärungen abhängen, wie sie in den im Jahre 1920 verkündeten 25 Punkten der Nazi-Partei zu finden sind, und auch nicht von den in späteren Jahren in "Mein Kampf" enthaltenen politischen Meinungsäußerungen. Der Gerichtshof muss untersuchen, ob ein konkreter Plan zur Kriegsführung bestand und bestimmen, wer an diesem konkreten Plan teilgenommen hat."

"Aus der Beweisführung geht jedoch mit Bestimmtheit eher das Bestehen vieler einzelner Pläne hervor, als eine einzige alle solche Pläne umfassende Verschwörung."

Ende des Zitats.

Diese Argumentation im IIG-Urteil liegt auf derselben Ebene wie der vom IIG in Bezug auf die Erfordernisse einer Kenntnis von Hitlers Angriffsplänen eingenommene Standpunkt. Wiederum fordert der IIG den Beweis fuer konkrete und bestimmte Tatsachen, naemlich die Teilnahme an einem konkreten Plan, der von seiner Ausfuehrung nicht allzuweit entfernt ist. Kein solcher Beweis ist von der Anklage beigebracht worden. In diesem Zusammenhang darf ich mich auf die Entscheidung des amerikanischen Supreme Court im Falle "Die Vereinigten Staaten gegen Falcone" beziehen, der im vorlaeufigen Trial Brief, Teil V, Seite 5 ff. angefuehrt ist. Danach muss der Beweis der Anklage in einem Verschwörungsfall ausser der Kenntnis des Verschwörers von dem ungesetzlichen Akt des anderen Verschwörers den Beweis von der Absicht einschliessen, den besagten ungesetzlichen Akt zu foerdern, ihm Vorschub zu leisten und daran mitzuwirken. Wiederum hat die Anklagebehoerde fuer eine solche Absicht von Seiten der Angelegten kein Beweismaterial vorgelegt.

Zum Schluss meiner Ausfuehrungen zu diesem Gegenstand moechte ich aus den Begrueendungen der eben erwaehnten Entscheidung die folgende bezeichnende Stelle zitieren, die sich im Vorlaeufigen Trial Brief der Anklagebehoerde, Teil V, Seite 5, befindet, - ich zitiere:

"Dieser Unterschied ist aus zwei Gesichtspunkten wichtig. Der eine ist die sichere Feststellung, dass der Verkäufer von der ungesetzlichen Verwendung, die der Käufer beabsichtigt, weiss, der andere ist der Nachweis, dass er durch den Verkauf sie zu fördern, ihr Vorschub zu leisten und daran mitzuwirken beabsichtigt. Wenn diese Absicht durch einen äusseren Akt in die Wirklichkeit umgesetzt wird, so liegt darin der Kernpunkt der Verschwörung. Sie ist zwar nicht identisch mit der blossen Kenntnis, dass ein anderer eine ungesetzliche Handlung vorhat, steht aber zu einer solchen Kenntnis in Beziehung. Ohne die Kenntnis kann die Absicht nicht existieren. Ferner um die Absicht nachzuweisen, muss der Beweis der Kenntnis klar und eindeutig sein, weil die Beschuldigung einer Verschwörung nicht begründet werden kann, in dem man Indizium auf Indizium heuft und so das webt, was in diesem Prozess ein Schleppnetz genannt worden ist, in das alle materiellen Verbrechen hineingezogen werden können."

Ende des Zitats.

Das ist gerade, was die Anklage in diesem Fall bei der Beweisaufnahme zu tun versuchte. Sie haufte Indizium auf Indizium, ohne einen klaren unzweideutigen Beweis beizubringen von der Kenntnis der Angeklagten von bestimmten Angriffsplänen Hitlers und von der Absicht, solche Pläne zu fördern, ihnen Vorschub zu leisten und daran mitzuwirken. Im direkten Gegensatz zu den im IMG-Urteil entwickelten Grundsätzen brachte die Anklage eine vage und zweideutige Theorie vor, trug eine Menge irrelevanten Beweismaterials zusammen und verdunkelte dadurch, was wirklich in Bezug auf diese Punkte ihrer Anklageschrift zur Debatte stand, wie es, ich darf sagen, mit weiser Voraussicht vom IMG skizziert worden ist, und deshalb sind alle ihre Bestrebungen - wie viel Mühe sie auch daran gewendet haben mag - zum Scheitern verurteilt.

Aus diesen Gründen beantrage ich ergebenst, das Hohe Gericht möge die Angeklagten von den Anklagen unter Punkt I und V im Sinne der Anklageschrift freisprechen.

Ich werde nun mit der Erlaubnis der Herren Richter zu einem andern allgemeinen Thema uebergangen, das ich wiederum im Namen aller Angeklagten dieses Tribunal vorlegen moechte, naemlich:

Die allgemeine Theorie der Verantwortlichkeit der Angeklagten an

den zur Klage stehenden Verbrechen.

Ich glaube, ich darf mit Recht sagen, dass dies das Schluesselproblem dieses Prozesses ist, und dass der Gesichtspunkt, unter dem das Problem betrachtet wird, fuer die Beurteilung der persoenlichen Verantwortlichkeit eines jeden der Angeklagten fuer irgendeines der bestimmten Verbrechen, die ihm unter den Punkten der Anklageschrift zur Last gelegt werden, entscheidend ist. Deshalb ist die Frage, die, wie ich ehrerbietigst unterstelle, Sie, meine Herren Richter, sich spaeter in Ihren Beratungszimmer zu fragen haben werden, naemlich, welche allgemeine Theorie der Verantwortlichkeit eine rechtlich gesunde Basis darstellt, von hoechster Bedeutung und sollte hoechst gewissenhaft oertert werden.

In meinen Einleitenden Ausfuehrungen fuer Paul HAEFLIGER sagte ich, dass bei der Durchsicht der unglaublich grossen Menge von Beweismaterial, das von der Anklagebehoerde ueber die Taetigkeit der 19 Erben vorgelegt worden ist, ein Punkt mir am meisten auffaellt: Es ist die unglaublich kleine Menge Beweismaterial, dass die Anklagebehoerde ueber die persoenliche Verantwortlichkeit jedes einzelnen Angeklagten beigebracht hat. Als ich diese Einleitenden Ausfuehrungen vorlegte, war ich noch nicht vertraut mit Teil VI des Vorlaeufigen Trial Briefs der Anklage, die ihre allgemeine Theorie der Verantwortlichkeit enthaelt. Ich war deshalb besonders darauf gespannt, ob dieser Teil des Briefs der Anklage meinen allgemeinen Eindruck, den ich in der obenorwachten Stelle meiner Einleitenden Ausfuehrungen skizzierte, bestaetigen oder umstossen werde. Und ich muss sagen, dass ich nach der Lektuere dieses Teiles des Briefs der Anklage mehr als je ueberzeugt bin, dass die Anklage bei der Erloedigung der Beweispflicht, die ihr in diesen

Prozess obliegt, voellig gescheitert ist.

Wie bereits in dieser Ansprache hervorgehoben, ist es die Pflicht der Anklage, ueber jeden begruendeten Zweifel hinaus die persoenliche Schuld eines jeden Angeklagten nachzuweisen.

Es ist eines der Grundprinzipien der Strafrechtslehre bei allen gesitteten Voelkern, dass, wie der IIG es ausdrueckte, die Schuld im Sinne des Strafgesetzes persoenlich ist, und Massenbestrafungen vermieden werden muessen. Nach diesem Grundprinzip, das der IIG sogar in Bezug auf die in seinem Urteil behandelten verbrecherischen Organisationen anerkannte, sollte es unbestritten klarsein, dass es im Strafgesetz keine Kollektivschuld oder -Verantwortung gibt, die aus der Zugehoerigkeit zu einer bestimmten Organisation oder Koerperschaft, wie z.B. dem Direktorium einer Gesellschaft, sich herleitet. Es darf in diesem Zusammenhang hervorgehoben werden, dass der IIG durch den Freispruch des fruheren Reichskabinetts, das ja die Verkoerperung des politischen Willens des deutschen Volkes war, von der Anklage einer Verschwörung zum Zwecke der Beghung von Verbrechen gegen den Frieden diese Tatsache anerkannte.

Und doch gruendet die Anklage bei der Darlegung ihrer allgemeinen Theorie der Verantwortlichkeit im Teil VI ihres Vorlaeufigen Trial Briefs ihre Argumente auf die Annahme einer Kollektiv-Verantwortlichkeit aller Angeklagten, die sich aus ihrer Zugehoerigkeit zum Vorstand der IG Farben beziehungsweise anderer Gremien herleitet. So ersetzt die Anklage die ihr obliegende Beweislast fuer die persoenliche Schuld eines jeden Angeklagten durch eine Theorie, die so vage ist, so wenig durch Tatsachen gestuetzt und mit den Grundsuetzen von Recht und Billigkeit so wenig zu vereinbaren ist, wie ihre Theorie ueber den inneren Tatbestand unter Punkt I der Anklageschrift. Deshalb ist auch diese Theorie der Kollektiv-Verantwortlichkeit der Angeklagten, die aus ihrer Eigenschaft als Vorstandsmitglieder der IG hergeleitet wird und scheinbar als Schloppnetz dienen soll, um alle Angeklagten einzufangen, zum Scheitern verurteilt.

Zu Beginn des Teils VI ihres Briefs fuehrt die Anklagebehoerde aus, dass jeder einzelne der Angeklagten, von seinen industriellen Stellungen abgesehen, gehobene politische, buergerliche und militaerische Stellungen in Deutschland bekleidete, dass die Angeklagten durch die Ausnutzung dieser Stellungen und ihres persoenlichen Einflusses an der in Punkt I,II

III und V der Anklageschrift zum Vorwurf gemachten Verbrechen teilnahmen. Diese Beschuldigung, mit der ich mich bereits in meinen Argumenten zum Punkt I der Anklageschrift befasst habe, wird durch keinerlei Beweis gestuetzt. Erstlich liegt fuer die behaupteten hohen politischen, buergerlichen und militaerischen Stellungen kein Beweis vor. Die Anklage bezieht sich in diesem Zusammenhang auf ihre Dokumentenbuecher 11 und 56, die die Affidavits aller Angeklagten ueber ihre Stellungen enthalten. Bei naechster Betrachtung dieser Stellungen kann man bloss sagen, dass die Anklagebehoerde mit ihrer Behauptung, dass die Angeklagten "hohe" politische, buergerliche und militaerische Stellungen bekleideten, gelinde gesagt, weit ueber das Ziel hinausgeschossen hat. Ich moechte das Hohe Gericht ergebnst bitten, z.B. diese amtlichen oder halbamtlichen Stellungen der Angeklagten, die in den meisten Faellen auf nichts mehr hinausliefen als auf Mitgliedschaft in der Leitung einer der sogenannten Wirtschaftspruppen oder anderer wirtschaftlicher Koerperschaften mittlerer Rangstufe ohne jeden politischen oder militaerischen Charakter, mit den von den Angeklagten im IMG-Prozess bekleideten Stellungen zu vergleichen, um die wahre Bedeutung des Einflusses richtig zu wuerdigen, den die Angeklagten kraft dieser Stellungen ^{auf} das, was die Anklage "Vorbereitung Deutschlands auf den Krieg" und die Teilnahme an der "Fuehrung des Krieges durch Deutschland" nennt, ausueben konnten. Und es ist ganz be-lustigend, dass die Anklage die Schwaeche ihres Standpunktes zugibt, indem sie auf Seite 2, Teil VI, ihres Trial Briefs das Folgende sagt: -ich zitiere -

"Wir haben an dieser Stelle nicht vor, die Wichtigkeit einer jeden von den Angeklagten bekleideten Stelle zu betrachten. Es genuegt hier zu bemerken, dass diese im Anhang "A" der Anklageschrift aufgezuehlten Stellungen die Angeklagten in die Lage versetzten in betruechtlicher Masse an vielen Dingen, die fuer Deutschlands Kriegsvorbereitungen und Deutschlands Kriegsfuehrung lebenswichtig waren, waehrend einer Periode von zwelf langen Jahren teilzunehmen.

Ende des Zitats.

Leider kann die Verteidigung weder in dem Trial Brief noch in den Dokumentenbuechern der Anklage irgendeine andere Stelle finden,

in der die Wichtigkeit besagten Stellungen jedes Angeklagten in Verbindung mit den vorgeworfenen Verbrechen betrachtet ist. Die Dokumentenbischer 11 und 66 der Anklagebehörde sprechen keineswegs fuer sich selbst.

Von diesen Ausfuehrungen kann deshalb nur der einzige Schluss gezogen werden, dass die Anklage der ueber jeden vernuenftigen Zweifel hinaus gesicherte Beweis der persoenlichen Schuld jedes Angeklagten durch Hinweis auf diese von ihnen innegehabten Stellungen vollkommen misslungen ist. Ich will nicht hart mit der Anklage umspringen, aber ich muss doch sagen, dass ihre Argumentation unter "A" von Teil VI ihres Vorlaefigen Trial Briefs ein klassisches Beispiel einer vollkommenen Verkenennung der Beweislast, die der Anklage in Bezug auf die Schuld eines Angeklagten in einem Strafprozess obliegt, darstellt.

Dasselbe trifft zu in Bezug auf die Argumente der Anklagebehörde unter "B" von Teil VI ihres Vorlaefigen Trial Briefs, der sich mit der Mitgliedschaft im Vorstand befasst.

Auf Grund der obengemachten Ausfuehrungen, dass strafrechtliche Schuld persoenlich ist und dass deshalb eine strafrechtliche Kollektiv-Verantwortlichkeit nicht besteht, kann die Tatsache, dass jemand Mitglied des Vorstandes der IG Farben oder eines seiner Ausschuesse gewesen ist, niemals allein als genuegender Beweis der strafrechtlichen Schuld eines solchen Mitgliedes im Sinne der verschiedenen Punkte der Anklageschrift angesehen werden. Die Anklagebehörde aber behauptet das.

Die Theorie der Anklage ist deren Wesen nach die folgende:

Der Vorstand der IG Farben wird beschuldigt, ueber eine relativ lange Zeitspanne hindurch eine Politik und ein Programm eingeleitet, gebilligt und ratifiziert zu haben, die darin bestanden,

- (a) Deutschland auf einen Angriffskrieg vorzubereiten und an der Fuehrung eines solchen Krieges durch Deutschland teilzunehmen;

- (b) die chemischen Industrien in ganz Europa zu pluendern;
- (c) Sklavenarbeit zu gebrauchen;
- (d) die Sklavenarbeiter zu misshandeln; darunter fiel die Vornahme von medizinischen Versuchen an KZ-Insassen und die Lieferung von Giftgas fuer ihre Ausrottung.

Mit anderen Worten, die Anklagebehoerde behauptet, dass der Vorstand der I.G. eine allgemeine Politik ins Werk setzte, guthiess und billigte, die alle unter den Punkten I, II und III der Anklageschrift vorgeworfenen Verbrechen umfasste, und dass alle Angeklagten wegen ihrer Zugehoerigkeit zu besagtem Vorstand/^{an}dieser einleitenden und zustimmenden Taetigkeit teilnahmen.

Dann faehrt die Anklage auf Seite 3 von Teil VI ihres Trial Briefs fort: - ich zitiere -

"Die Tatsache, dass ein einzelnes Vorstandsmitglied eine bestimmte Einzelheit bei der Ausfuehrung eines Programms, das er ins Werk gesetzt, unterstuetzt oder gebilligt hatte, nicht gekannt haben mag, ist unwichtig. Die Anklagebehoerde nimmt sicherlich nicht die Haltung ein, dass in einem Riesenkonzern wie diesem jede Person alle die einzelnen Verzweigungen in der Ausfuehrung aller beschlossenen Richtlinien kennen konnte. Es kann vorkommen, dass bei Gelegenheit bei der Ausfuehrung einer vom Vorstand gebilligten Politik eine bestimmte Handlung unternommen wurde die im urspruenglichen Programm nicht vorgesehen war. Wo aber, wie hier, die Ausfuehrung eines speziellen Programms sich ueber die vergleichsweise lange Zeitperiode erstreckt, koennen, die, die fuer die Ingangsetzung dieses Programms und fuer seine Ausfuehrung verantwortlich sind, nicht behaupten, dass sie nicht wussten, was waehrend seiner Ausfuehrung vorging..... Sie wurde von Menschen geleitet und ihre verantwortlichen Leiter waren die Mitglieder des Vorstandes. Diese Leute, denen von Rechts wegen die Leitung oblag, und die in der Tat ihn leiteten, koennen sich nicht der Verantwortung entziehen, weil sie die Hauptfolgen der Politik, die sie in Bewegung setzten oder spaeter guthiessen, nicht herausfinden koennen.

Ende des Zitats.

Auf Seite 9 ihres betreffenden Briefs sagt die Anklage weiterhin: - ich zitiere -

"Der Umstand, dass ein Angeklegter Vorstandsmitglied der IG war, ist in zwei Beziehungen von groesster Bedeutung. Erstens bedeutet es, dass er als einer der Angehoerigen des Direktoriums an den durch die I.G. ausgefuehrten Handlungen im wesentlichen Umfang teilnahm; zweitens bedeutet es, dass er von jeder Sache von irgend-einer Wichtigkeit von den Angelegenheiten der IG wusste, obgleich er von vielen Einzelheiten in Verbindung mit der Verwaltung solcher Angelegenheiten nichts gewusst haben mag (er haette sie bei der geringsten Nachforschung herausfinden koennen)."

Ende des Zitats.

Die Anklage nimmt daher den Standpunkt ein, dass zur Ueberfuehrung der Angeklagten im Sinne der verschiedenen Punkte der Anklageschrift der Nachweis nicht notwendig ist, dass jeder Angeklagte von jedem in der Anklageschrift erfassten Verbrechen, beziehungsweise von allen Einzelheiten eines solchen Verbrechens, Kenntnis hatte und dass jeder Angeklagte aktiv an der Begehung eines solchen Verbrechens teilnahm, und zwar, weil alle diese Verbrechen, wie die Anklage es ausdrueckt, in Ausfuehrung einer allgemeinen Politik und eines Gesamtprogramms, das von den Angeklagten ins Werk und gebilligt worden war, begangen wurde. Demgemass misst die Anklage der Tatsache, dass in der Anklageschrift gewisse Einzelangeklagte mit gewissen bestimmten, unter Punkt I, II und III zum Vorwurf gemachten Taetigkeiten in Verbindung gebracht wurden und angeblich taetigen Anteil daran nahmen, kein Gewicht bei.

Nach Ueberpruefung dieser Theorie der Anklagebehoerde, die zu skizzieren ich mir soeben erlaubt habe, kann nach meiner bescheidenen Meinung nicht mehr der geringste Zweifel bestehen, dass der Standpunkt der Anklagebehoerde im glatten Gegensatz steht zu der obenerwaehten Theorie, wonach Schuld im strafrechtlichen Sinne persoenlich ist, wonach keine strafrechtliche Kollektiv-Schuld existiert und wonach es Pflicht der Anklage ist, ueber jeden begruendeten Zweifel hinaus bei jedem Angeklagten seine persoenliche Teilnahme und seine Kenntnis von jedem bestimmten ihm in den verschiedenen Punkten der Anklageschrift vorgeworfenen Verbrechen nachzuweisen.

Untenstehende Analyse der Theorie der Anklagebehoerde wird die Richtigkeit dieser Feststellung beweisen.

Erstlich hat die Anklage die Grundlage ihrer Theorie nicht bewiesen, naemlich die Inangasetzung, Gutheissung und Billigung der behaupteten allgemeinen Politik des Vorstandes, die die unter den verschiedenen Punkten der Anklageschrift vorgeworfenen Verbrechen einschliesst.

Im ersten Teil meiner Ansprache, die sich mit Punkt I der Anklageschrift befasste, habe ich bereits auseinandergesetzt, dass das

von der Anklage angebotene Beweismaterial die Anschuldigung, der Vorstand der IG habe eine Politik oder ein Programm zur Begabung von Verbrechen gegen den Frieden ins Werk gesetzt, gutgeheissen und gebilligt, nicht erhaertet.

Dasselbe trifft auch mit Bezug auf Punkt II und III zu. Die Anklage hat kein Beweismaterial beigebracht, das ueber jeden begruendeten Zweifel hinaus zeigt, dass der Vorstand der IG Farben eine Politik und ein Programm ins Werk setzte, gutheiss und billigte, das die Pluenderung der chemischen Industrie in ganz Europa, den Einsatz von Sklavenerbeit, die Misshandlung der Sklavenerbeiter, die Vornahme medizinischer Experimente an KZ-Insassen und die Lieferung von Giftgas fuer ihre Ausrottung vorseh.

Deshalb ist auch die eigentliche Grundlage der Auffassung der Anklage von der Verantwortlichkeit der Angeklagten nicht bewiesen worden, was unweigerlich die ganze Theorie ueber den Haufen wirft.

Abgesehen davon ist die Auffassung der Anklagebehoerde ihren Wesen nach keine Theorie der strafrechtlichen Schuld im Sinne der Punkte I, II und III der Anklageschrift, sondern - in der von der Anklagebehoerde vorgebrachten Form - eher eine Theorie der strafrechtlichen Schuld im Sinne der Anklage auf Verschwörung. Dies wird klar genug durch den Hinweis auf die von der Anklage auf Seite 3 und 4 von Teil V ihres Vorlaeufigen Trial Briefs gemachten Ausfuehrungen, die sich mit dem gemeinsamen Plan oder der Verschwörung befassen: - ich zitiere -

"Die Verschwörung ist dadurch charakterisiert, dass die Angeklagten waehrend einer Reihe von Jahren die Durchfuehrung der in Teil I, II und III dieses Schriftsatzes beschriebenen Handlungen planten und deshalb untereinander konspirierten. Diese Handlungen waren nicht einzeln stehende Handlungen individueller Angeklagter. Im Gegenteil, diese Handlungen waren ein Teil eines Planes und eines Programmes, durch eine Reihe von Jahren hindurch in Besprechungen und Konferenzen der Angeklagten ihre Wurzeln schlugen und Form annahmen - im Vorstand, im Technischen Ausschuss, im Kaufmannischen Ausschuss, in anderen Komitees und Stellen der IG, im Briefwechsel, in Denkschriften und Berichten und im Verlaufe von weniger formellen Gedankenaustausch der Angeklagten."

Ende des Zitats.

Diese Ausführungen der Anklage zur Stuetzung der Anklage auf Verschwoerung entsprechen dem Wesen nach jenen, die die Grundlage ihrer allgemeinen Theorie der Verantwortlichkeit bilden, wie sie im Teil VI des Vorleufigen Trial Briefs vorgebracht worden sind und die ich vor ein paar Minuten zitiert habe.

Nun ist bereits in Bezug auf die Anklage wegen Verschwoerung zur Begehung von Verbrechen gegen den Frieden gezeigt worden, dass das von der Anklage angebotene Beweismaterial diese Anklage nicht stuetzt.

In Bezug auf die unter Punkt II und III der Anklageschrift zur Anklage stehenden Verbrechen kann nach den Entscheidung dieses Tribunals vom rechtlichen Standpunkt aus keine Verschwoerung angenommen werden.

Daraus folgt, dass wiederum die gesamte Theorie der Anklage von der Verantwortlichkeit der Angeklagten, die aus der behaupteten verbrecherischen Politik des Vorstandes der I.G. Farben sich herleitet, ueber den Haufen geworfen wird, da ja die geschilderte Verschwoerung in Bezug auf Punkt I der Anklageschrift nicht bewiesen worden ist und eine Anklage auf Verschwoerung im Sinne von Punkt II und III der Anklageschrift rechtlich nicht vorliegt.

Abgesehen von diesen allgemeinen Gesichtspunkten, die die voellige Haltlosigkeit der Theorie der Anklagebehoerde klar beweisen, moechte die Verteidigung das Hohe Gericht bitten, die folgenden Tatsachen zu betrachten. Im Lichte dieser Tatsachen wird sich erweisen, dass der einzige juristisch gangbare Weg, auf dem man an das allgemeine Problem der Verantwortlichkeit herankommen kann, die Teilung der Verantwortung unter die verschiedenen Vorstandsmitglieder imEinklang mit den ihnen zugewiesenen Sonderaufgaben ist. Mit anderen Worten, es muss als Grundlage das Prinzip der Dezentralisierung angenommen werden, dass innerhalb des Rahmens der IG angewandt und verschiedentlich im Laufe dieses Prozesses zitiert worden ist.

Wie ich bereits in meinen Einleitenden Ausführungen fuer den Angeklagten HAEFLIGER ausfuhrte, koennen bei der Beurteilung der strafrechtlichen Verantwortlichkeit fuer eine Taetigkeit, die entweder innerhalb oder ausserhalb des Rahmens des von ihm geleiteten Geschaeftes faellt, nur die tatsaechlichen Verhaeltnisse in Bezug auf die Stellung eines Angeklagten und der tatsaechliche Umfang seiner Aufgaben allein in Rechnung gestellt werden. Es ist der Standpunkt der Verteidigung, dass, soweit das Strafrecht in Frage kommt, nur eine auf solche Tatsachen gestuetzte Auffassung der Verantwortlichkeit als eine juristisch tragbare Theorie fuer die Wertung der Schuld eines Angeklagten angesehen werden kann. Auf Grund des von der Verteidigung vorgelegten Beweismaterials stellen sich diese Tatsachen folgendermassen dar:

IG Farben - der englische Name der "I.G." - das heisst "Interessengemeinschaft", hatte ihren Ursprung in einer Verschmelzung verschiedener bedeutender unabhaeangiger chemischer Firmen. Diese Verschmelzung begegnete einem gewissen Widerstreben, da die leitenden Direktoren der verschiedenen Firmen ihre Unabhaeandigkeit und Selbstverwaltung zu verlieren fuerchteten. Diesen Befuerchtungen wurde bei der Aufrichtung der Organisation des neuen IG-Farben-Konzerns Rechnung getragen. Das Resultat war, dass einerseits alle geschaeftsfuehrenden Direktoren der verschiedenen Firmen in den Vorstand des neuen Konzerns uebernommen wurden und andererseits innerhalb der Organisation des neuen Konzerns das Prinzip der Dezentralisierung befolgt wurde, um, soweit wie es unter den Umstaenden moeglich war, die fruehere Unabhaeangigkeit und Selbststaendigkeit der geschaeftsfuehrenden Direktoren, die die in den IG Farben zusammengeschlossenen Firmen geleitet hatten, zu bewahren. Dies fuehrte zu einer weitgehenden Teilung der Arbeits- und Verantwortlichkeitsgebiete unter den verschiedenen Vorstandsmitgliedern, die in den von ihnen geleiteten Sondergebiet von der Zustimmung und Mitharbeit der anderen Vorstandsmitglieder nicht abhingen, wenn keine besonders wichtigen Dinge in Frage kamen und.

diese Dinge nicht ueber den Rahmen des gewoehnlichen, von ihnen bearbeiteten Geschaeftes hinausgingen. Innerhalb dieser Grenzen war deshalb jedes Vorstandsmitglied auf seinem Arbeitsgebiet unabhangig, und es entwickelte sich die Uebung, dass kein anderes Vorstandsmitglied jemals in seine Geschaeftsfuehrung eingriff. Diese Praxis gruendete sich nicht nur auf die historischen Tatsachen vor dem Zusammenschluss, die ich vor einigen Augenblicken beschrieb, sondern rechtfertigte sich auch durch praktische Grunde und Notwendigkeiten, die keine andere Wahl liessen, naemlich:

- (1) der riesenhafte und stets anwachsende Umfang des von der IG gefuehrten Geschaeftes, der nicht einmal von der Anklage bestritten wird und von dem das Beweismaterial ein lebendiges Bild gibt - als Beispiel darf ich auf die von der Verteidigung des Herrn v. FRIEDEN im Dokumentenbuch V auf Seite 313 vorgelegte Tabelle hinweisen, die den Jahresumsatz der IG zeigt, der von 1.029 Millionen RM in Jahre 1926 auf 2.904 Millionen RM in Jahre 1942 anstieg;
- (2) Hand in Hand damit die immer anwachsende Gefolgschaft der IG. Hier wiederum darf ich auf besagte Tabelle verweisen, die ein Anwachsen der Gefolgschaft von 93.742 Mitgliedern im Jahre 1926 auf 187.700 im Jahre 1942 zeigt.
- (3) dem steht die abnehmende Zahl der Vorstandsmitglieder gegenueber, die nach der obenewahnten Tabelle von 79 Mitgliedern im Jahre 1926 auf 32 im Jahre 1932 absank und von da an allmaechlich auf 23 Mitglieder im Jahre 1942 herunterging.

Daraus folgt, wie auch auf der vorerwahnten Tabelle gezeigt wird:

auf jedes Mitglied des IG Farben-Vorstandes entfiel

im Jahre 1926 ein Umsatz von 13 Mill. RM und 1187 Gefolgschaftsmitglieder,
im Jahre 1932 ein Umsatz von 25 Mill. RM und 1900 Gefolgschaftsmitglieder,
im Jahre 1936 ein Umsatz von 39 Mill. RM und 3323 Gefolgschaftsmitglieder,
im Jahre 1942 ein Umsatz von 126 Mill. RM und 8161 Gefolgschaftsmitglieder.

Das wurde heissen, dass die jaehrlichen Umsatz- und Gefolgschaftsmitgliederzahlen bei der IG Farben pro Vorstandsmitglied sich gegenueber 1926 im Jahre 1932 verdoppelt, im Jahre 1936 verdreifacht und im Jahre 1942 verzehnfacht hatten.

Diese Zahlen lassen nur die eine unbestrittene Schlussfolgerung zu: Da die Zahl der Vorstandsmitglieder mit dem stetig ansteigenden Umsatz und der Zahl der Gefolgschaftsmitglieder bei der IG Farben nicht Schritt hielt sondern im Gegenteil allmählich abnahm, war es für jedes Vorstandsmitglied vollkommen unmöglich - und ging sicherlich weit über seine Arbeitskraft hinaus - sich um alle Dinge bei der Leitung des Geschäftes innerhalb dieses - wie ihn die Anklage nennt - Riesen-Konzerns zu kümmern. Deshalb musste eine Verteilung von Arbeitsgebieten und eine Aufteilung der Verantwortlichkeit der verschiedenen Vorstandsmitglieder einfach kommen. Es war eine zwingende Notwendigkeit. Es gab keinen anderen Weg. Diese Notwendigkeit wird ausserdem durch die Tatsache unterstrichen, dass in Hinsicht auf die grosse Verschiedenheit der von der IG hergestellten und verkauften Produkte sich notwendigerweise ein hohes Mass von Spezialisierung unter den Vorstandsmitgliedern entwickelte, da es ja nicht möglich war, die Geschäfte eines bestimmten Produktions- oder Verkaufgebietes ohne eine hochentwickelte Fachkenntnis zu führen. Es folgt daraus, dass die verschiedenen Vorstandsmitglieder nicht nur aus physischen, in ihrer Arbeitskraft gelegenen Gründen, sondern auch aus Mangel an Spezialkenntnissen nicht in der Lage waren, die Tätigkeit eines anderen Vorstandsmitglieds innerhalb eines bestimmten Arbeitsgebietes in angemessener Weise zu beurteilen und sich deshalb auf ihr eigenes Arbeitsgebiet beschränken mussten.

Diese Aufteilung der Arbeitsgebiete und Verantwortlichkeiten führte in der Praxis zu einer beträchtlichen Autonomie der verschiedenen Werk- und Verkaufsgemeinschaften der IG Farben. Innerhalb dieser Gemeinschaften erfolgte je nach den verschiedenen Produkten dieser Gemeinschaften eine weitere Spezialisierung und Teilung der Verantwortlichkeiten, die zur Errichtung von Sonder-Ausschüssen und Unterausschüssen, meistens technischer Natur, führte, in denen alle Angelegenheiten, bevor sie an die grösseren Ausschüsse wie den TEA und in letzter Linie an den Vorstand gingen, gründlich behandelt wurden. Sogar

die Werke selbst genossen innerhalb der verschiedenen Werk- oder Betriebsgemeinschaften eine gewisse Autonomie, besonders in Fragen des Einsatzes und der Behandlung von Arbeitern, fuer die die örtlichen Betriebsleiter nach dem deutschen Gesetz zur Regelung der nationalen Arbeit, das spaeter erortert worden wird, verantwortlich waren.

Alle diese Tatsachen, die ich mir oben zu beschreiben erlaube habe, worden durch eine beträchtliche Menge Beweismaterial, das von der Verteidigung eingebracht wurde, bestaetigt. Ich darf in diesem Zusammenhang im Besonderen auf die eidestattlichen Erklärungen der fruheren Vorstandsmitglieder Dr. JACOBI (Verteidigungs-Beweisstueck 171, Dokumentenbuch v. Knieriem No.V, Seite 307) und Dr. PISTOR (Oster Beweisstueck 19, Dokumentenbuch I, Seite 42), die in diesen Prozess nicht unter Anklage stehen, und auf die eidestattliche Erklärung des Angeklagten v. Knieriem (Verteidigungs-Beweisstueck 170, Dokumentenbuch v.Knieriem No.V, Seite 292) hinweisen, ebenso wie auf die Aussagen verschiedener anderer Angeklagten und Zeugen zu diesen Thema.

Es folgt aus den obigen Ausfuhrungen, dass im Rahmen der IG Farben eine individuelle Verantwortlichkeit der verschiedenen Vorstandsmitglieder fuer ihre Taetigkeit auf ihren Sonderarbeitsgebiet bestand und dass daher das Prinzip der Dezentralisierung in beträchtlichen Umfange in Wirklichkeit umgesetzt worden war. Dies stellte jedoch nicht nur die tatsaechliche Praxis dar, sondern stand auch im Einklang mit den Vorschriften nicht nur der Statuten der IG sondern auch des in Frage kommenden deutschen Rechtes.

Die Statuten der IG Farben vom Jahre 1928, die die Anklagebehörde kennzeichnenderweise nicht in die Beweisfuhrung eingefuehrt hat, bestimmten in Paragraph 1, Absatz 2 das folgende:

"Wo Vorstandsmitgliedern gewisse Aufgaben zugewiesen worden sind, sollen diese von ihnen unabhängig und unter ihrer vollen und ausschliesslichen Verantwortlichkeit bearbeitet werden."

Ende des Zitats.

In diesen Statuten, die als Verteidigungs-Beweisstueck 169 (Dokumentenbuch v.Knieriem No.IV, Seite 261) in das Beweisverfahren eingebracht worden sind, heisst es dann weiter

dass als Ausnahme von diesem Prinzip der Einzelverantwortlichkeit die Vorstandsmitglieder in allgemeinen und wichtigen Angelegenheiten unabhängige Entscheidungen nicht treffen durften.

Die von der Anklage als Beweisstück 337, Dokumentenbuch 12, Seite 177 ins Beweisverfahren eingebrachten Statuten von Jahre 1938 nehmen, obgleich sie keine ausdrückliche Bestimmung darüber enthalten, dennoch unausgesprochen das Prinzip der Einzelverantwortlichkeit der Vorstandsmitglieder an, die in der Zwischenzeit in Folge der Grösse des Unternehmens eine Selbstverständlichkeit geworden war. Dies folgt aus Artikel 2 und 3 der Statuten, welche bestimmen, ich zitiere:

"Darüber hinaus ist es Pflicht jedes Vorstandsmitgliedes, solche Angelegenheiten vorzubringen, deren Kenntnis fuer die uebrigen Vorstandsmitglieder von Wichtigkeit ist, insbesondere diesen den Ueberblick ueber das Gesamtgeschäft erleichtert

Die einzelnen Vorstandsmitglieder sollen in der Regel besonders wichtige Angelegenheiten, die den Rahmen des laufenden Geschäfts ueberschreiten, dem Gesamtvorstand zur Entscheidung vorlegen."

Ende des Zitats.

Diese Bestimmungen setzen selbstverständlich die Einzelverantwortlichkeit der Vorstandsmitglieder fuer Dinge, die als nicht besonders wichtig nicht dem vollen Vorstand vorgelegt wurden, voraus.

Das Prinzip der dezentralisierten Verantwortlichkeit steht jedoch nicht nur in vollen Einklang mit den Statuten der IG Farben sondern auch mit den Vorschriften des deutschen Gesetzes.

Es sei in diesem Zusammenhang auf das Rechtsgutachten eines bekannten Fachmannes auf diesem juristischen Sondergebiet, des Dr. Walter Schmidt, hingewiesen, das als Verteidigungsbeweisstück 280, Krieger Dokumentenbuch 39, vorgelegt worden ist. Da die IG Farben eine nach deutschem Recht konstituierte Gesellschaft war, kann kein Zweifel daran sein, dass die juristische Seite der Verantwortung eines Vorstandsmitglieds auch nach dem deutschen Recht betrachtet werden muss, naemlich nach dem Aktiengesetz von 30. Januar 1937 und - soweit es sich um Arbeiterfragen handelt - nach dem Gesetz zur Regelung

der nationalen Arbeit von 20. Januar 1934. Die Anklage hat durch Vorlegung von Auszügen aus beiden Gesetzen diese Tatsache anerkannt. Ich darf mich auf das Anklagebeweisstück 389, Dokumentenbuch 15, Seite 50 und das Beweisstück 393, Dokumentenbuch 15, Seite 127 beziehen.

Das Aktiengesetz bestimmt in Paragraph 71, Absatz (2) ausdrücklich, ich zitiere:

"Falls der Vorstand aus mehreren Mitgliedern besteht, sind nur sachliche Vorstandsmitglieder gemeinsam berechtigt, fuer die Gesellschaft Erklärungen abzugeben und zu handeln, es sei denn, dass die Statuten etwas anderes bestimmen. Der Vorstand kann einzelne Vorstandsmitglieder ermächtigen, gewisse Geschäfte oder gewisse Arten von Geschäften vorzunehmen....."

Ende des Zitats.

Hierdurch wird das Prinzip der Dezentralisierung und der Einzelverantwortlichkeit von dem in Frage kommenden Gesetz anerkannt.

Dasselbe gilt nach dem Gesetz ueber die Regelung der nationalen Arbeit in Bezug auf Arbeiterfragen. Es bestimmt in Paragraph 2; ich zitiere:

"Der Fuehrer des Betriebes entscheidet der Gefolgschaft gegenueber in allen betrieblichen Angelegenheiten, soweit sie durch dieses Gesetz geregelt werden. Er hat fuer das Wohl der Gefolgschaft zu sorgen."

Ende des Zitats.

Und in Paragraph 3 heisst es, ich zitiere:

"Bei juristischen Personen und Personengesellschaften sind die gesetzlichen Vertreter Fuehrer des Betriebes."

Der Unternehmer oder bei juristischen Personen und Personengesellschaften die gesetzlichen Vertreter koennen eine an der Betriebsleitung verantwortlich beteiligte Person mit ihrer Stellvertretung betrauen; dies muss geschehen, wenn sie den Betrieb nicht selbst leiten."

Ende des Zitats.

Demnach schrieb das damalige deutsche Gesetz die Ernennung eines besonderen sachlichen stellvertretenden Betriebsfuehrers vor, der fuer alle Arbeiterfragen verantwortlich war, falls die gesetzlichen Vertreter einer Gesellschaft den Betrieb nicht selbst leiteten.

Dies ist wiederum eine gesetzlicherseits erfolgte Bestätigung einer Politik, die die IG Farben bereits vor dem Inkrafttreten besagten Gesetzes befolgt hatte, nämlich die Berufung örtlicher Betriebsführer, die fuer die ihren Betrieb angehenden Arbeiterfragen, besonders fuer die Beschaeftigung und die Behandlung der Gefolgschaft, zustaeendig waren. So ist es klar, dass der Vorstand der IG Farben als solcher fuer Arbeiterfragen, die einem bestimmten Betrieb angingen, nach den in Frage kommenden Recht keine Verantwortlichkeit hatte, eine Tatsache, die bei Punkt III der Anklageschrift Bedeutung gewinnen kann, wenn entgegen der Meinung der Verteidigung die Begehung eines Verbrechens in einem der IG Betriebe angenommen werden sollte.

Wir haben somit festgestellt, dass das Prinzip der Einzelverantwortlichkeit der Vorstandsmitglieder der IG Farben, das mit der Ausnahme von besonders wichtigen Angelegenheiten, wenn und insoweit wie den vollen Vorstand vorgegetragen wurden, fuer den Bereich ihres Arbeitsfeldes zur tatsächlichen Praxis geworden war, in Einklang stand sowohl mit den IG-Statuten als auch mit dem in Frage kommenden deutschen Gesetz. Es ist deshalb unbestritten klar, dass innerhalb dieser Beschränkungen ein Vorstandsmitglied sowohl nach den Statuten der IG als auch nach dem deutschen buergerlichen Gesetz allein die Verantwortung trug. Seine Einzelverantwortlichkeit schloss daher eine Gesamtverantwortlichkeit der anderen Vorstandsmitglieder aus, mit der Ausnahme des Falles, dass die anderen Vorstandsmitglieder ihre Aufsichtspflicht verletzten, wovon wir spaeter sprechen werden.

Es versteht sich von selbst, dass dasselbe auch auf die strafrechtliche Verantwortlichkeit eines Vorstandsmitglieds fuer eine solche Taetigkeit innerhalb des Bereiches seines Arbeitsgebietes zutrifft. Denn wenn das buergerliche Gesetz die Einzelverantwortlichkeit eines Vorstandsmitgliedes unter Ausschluss der Gesamtverantwortlichkeit der anderen anerkennt, dann kann natuerlich

auf Grund des oben erwähnten, allgemein anerkannten Grundsatzes, wonach strafrechtliche Schuld persönlich ist, die Lage unter dem Strafgesetz nicht anders sein.

Wenn man sich das ueber das Prinzip der Einzelverantwortlichkeit jedes IG-Vorstandsmitglieds fuer sein spezielles Arbeitsfeld Gesagte vor Augen haelt, dann muss danach die Anklage, um sich ihrer Beweispflicht zu entledigen, fuer jeden einzelnen Angeklagten - und nicht, wie sie es seither getan hat, in Ganssch und Bogen - nachweisen, dass er persönlich an einem bestimmten, in der Anklageschrift erwähnten Verbrechen teilnahm, dass er von allen Einzelheiten Kenntnis hatte und dadurch in der Lage war, den verbrecherischen Charakter der fraglichen Tatkraft zu beurteilen, wie es das Gesetz aller Kulturenationen, um das Vorliegen des Bewusstseins einer strafbaren Handlung auf Seiten eines Angeklagten festzustellen, vorschreibt.

In direktem Gegensatz zu diesen, aus den vorerwähnten Tatsachen hergeleiteten Prinzipien argumentiert die Anklagebehörde in Teil VI ihres Vorläufigen Trial Briefs auf Grund von allgemeinen und vagen Annahmen. Sie behauptet, dass auf dem Wege ueber die verschiedenen Ausschuesse und Unterausschuesse der IG der gesamte Vorstand ueber alle wichtigen Angelegenheiten wohl informiert war. Das ist nichts als eine Annahme und kein Beweis der Teilnahme an einer Schuld. Die Verteidigung hat Beweismaterial dazueber vorgelegt, dass die Berichte an den Vorstand und den TEA knapp gefasst waren und nicht auf Einzelheiten eingingen, weil ja alle Einzelheiten in den Unterausschuesen grundlich besprochen wurden und die Vorstandsmitglieder sich auf das Fachwissen und das Gutachten des Vortragenden Vorstandsmitgliedes verlassen. Wir verweisen wiederum auf die vorerwähnten eidstattlichen Erklarungen der fruheren Vorstandsmitglieder Dr. Jacobi und Dr. Fister und des Angeklagten v. Knieriem. Die Anklagebehörde laesst

den Zweck solcher Berichte, der nach den Statuten von 1938, Paragraph 2 der folgende war, vollkommen aussser acht; ich zitiere:

"Daruober hinaus ist es Pflicht jedes Vorstandsmitgliedes, solche Angelegenheiten vorzubringen, deren Kenntnis fuer die uebrigen Vorstandsmitglieder von Wichtigkeit ist, insbesondere diesen den Ueberblick ueber das Gesamtgeschaeft erleichtert."

Ende des Zitats.

Deshalb sollten diese Berichte nur solche Hauptpunkte enthalten, die wesentlich waren zur Vermittlung eines Ueberblicks ueber die Geschaeftslage als Ganzes. Dem Vorstand und den grossen Ausschuessen, wie dem TEA und dem K.A., lag nur daran zu erfahren, ob eine Transaktion von grosser Bedeutung irgendwie die Interessen anderer Sparten oder Verkaufsgemeinschaften oder die der IG als Ganzes beruehrte. Deshalb wurden Einzelheiten, die auf diese Interessen keinen Einfluss hatten, selbstverstaendlich nicht in diese Berichte aufgenommen, dies um so mehr, als die Vorstands- und die TEA-Sitzungen und die Sitzungen des kaufmaennischen Ausschusses nur etwa alle zwei Monate stattfanden und bei einer langen Tagesordnung nur kurze Zeit dauerten; aus blossen zeitlichen Gruenden lag daher nicht die Moeglichkeit vor, auf Einzelheiten einzugehen.

Dies ist ein weiteres typisches Beispiel dafuer, dass die Anklagebehoerde bei dem Vortrag ihres Falles die Tatsachen und besonders die Lage bei der Vorstandsvorsehung eines solchen Riesenunternehmens vollkommen aussser Acht gelassen hat. Hat die Anklage wirklich Beweismaterial beigebracht fuer ihre Behauptung, dass das berichterstattende Vorstandsmitglied, um ein Beispiel zu nehmen, bei der Vorlage der Kredite fuer Auschwitz an den TEA oder den Vorstand den Einsatz und die Behandlung von KZ-Insassen erwaehnte, so dass daraus die anderen Vorstandsmitglieder den Eindruck gewinnen konnten, diese Lagerinsassen seien entweder ausschliesslich auf die Initiative der IG fuer Zwecke, die ausserhalb des Bereichs der Ausfuhrung regierungsseitiger Fertigungsauftraege lagen, eingesetzt oder von IG-Personal misshandelt worden, wenn wir einmal des Arguments halber annehmen, diese Anschuldigungen

der Anklagebehörde seien wahr? Oder, um ein anderes Beispiel zu nehmen, hat die Anklage Beweise dafür angeboten, dass ein Vorstandsmitglied, das seinen Kollegen ueber eine bestimmte, von der Anklage als Bereubungsakt bezeichnete Transaktion mit auslaendischen Partnern Bericht erstattete, seinen Kollegen von besagter Transaktion derartige Einzelheiten zu Kenntnis brachte, dass der Schluss gerechtfertigt war, diese Transaktion stelle eine Verletzung der Regeln des Yagor Abkommens dar? Es ist der Standpunkt der Verteidigung, dass von der Anklagebehörde kein solches Beweismaterial beigebracht worden ist.

Die Anklage uebersieht vollkommen die Tatsache, dass all die zahlreichen kleineren Ausschuesse und Unterausschuesse der IG nur zu dem Zweck eingesetzt worden waren, um all die Einzelheiten eines bestimmten Produktionsplanes oder einer bestimmten geschaeftlichen Transaktion zu handhaben, fuer die das jenes bestimmte Arbeitsgebiet leitende Vorstandsmitglied wegen des oben erwähnten Prinzips der Dezentralisierung verantwortlich war, und dass dieses Vorstandsmitglied deshalb die besagten Einzelheiten nicht dem vollen Vorstand oder einem groesseren Ausschuss wie den TMA oder den kaufmaennischen Ausschuss nicht vorlegte und auch nach den Statuten nicht vorzulegen brauchte. Jene groesseren Ausschuesse dienten nur dem Austausch von Informationen ueber Angelegenheiten von allgemeinem Interesse, die andere Sparten oder Verkaufsgemeinschaften oder die IG als Ganzes betrafen.

Deshalb waren im Gegensatz zu der Meinung der Anklagebehörde, wie sie in Teil VI des Vorlaeufigen Trial Briefs ausgedrueckt ist, alle diese Ausschuesse und Unterausschuesse der IG nicht etwa dazu bestimmt, den Vorstand volle Information ueber die Einzelheiten eines Produktionsplanes oder einer geschaeftlichen Transaktion zu liefern, sondern im Gegenteil, um den Gesamtvorstand von der Verantwortlichkeit, sich um alle diese Einzelheiten zu kuemmern, zu entlasten.

Die Anklagebehörde gibt in der Tat auf Seite 9 ihres Vorläufigen Trial Briefs, Teil IV, diese Tatsache mehr oder minder zu, indem sie sagt:
-Ich zitiere -

"Der Umstand, dass ein Angeklagter Vorstandsmitglied der IG war, ist in zwei Beziehungen von grösster Bedeutung. Erstens bedeutete es, dass er als einer der Angehörigen des Direktiums an den durch die IG ausgeführten Handlungen in wesentlichem Umfang teilnahm; zweitens bedeutet es, dass er von jeder Sache von irgendeiner Wichtigkeit von den Angelegenheiten der IG wusste, obgleich er von vielen Einzelheiten in Verbindung mit der Verwaltung solcher Angelegenheiten nichts gewusst haben mag."
Ende des Zitats.

Wenn daher nach der Erklärung der Anklagebehörde selbst ein Angeklagter viele Einzelheiten in Zusammenhang mit der Verwaltung von Dingen, die mit der Zuständigkeit eines anderen Angeklagten zusammenhängen, nicht kannte, dann kann er auf eine Anklage von solcher Schwere, wie sie in dieser Anklageschrift erhoben ist, nicht schuldig befunden werden, weil ja die Anklagebehörde nicht über jeden begründeten Zweifel hinaus, bewies, dass er mit allen Einzelheiten, die es ihm ermöglichten, den verbrecherischen Charakter der fraglichen Tätigkeit zu beurteilen, vertraut war.

Nun ruehrt die Anklagebehörde in der oben zitierten Stelle durch die Verwendung der Worte: - Ich zitiere -

"...er haette sie bei der geringsten Nachforschung herausfinden koennen....."
Ende des Zitats

an ein Problem, dessen der juristischen Literatur und den Gerichtsentscheidungen aller Kulturnationen Gegenstand gruendlicher Erörterungen gewesen ist, an das Problem des Verbrechens begangen durch Unterlassung.

Das Strafgesetz aller Kulturnationen bestimmt, dass ein Verbrechen entweder begangen werden kann auf dem Wege einer positiven Handlung oder eines positiven Verhaltens - oder durch Unterlassung, d.h. unter Verletzung einer Pflicht, zu handeln und dadurch den verbrecherischen Erfolg zu verhindern,

Was das auf dem Wege ueber positives Handeln begangene Verbrechen anlangt, so ist vom juristischen Standpunkt aus nicht viel dazu zu sagen,

Es soll te nur noch einmal in Bezug auf die im Artikel II, Ziffer 2 des Kontrollratsgesetzes Nr.10 erwachten Teilnahmegrade - seine Anwendbarkeit sei hier einen Augenblick beiseite gelassen - betont werden, dass blosses Kenntnis der verbrecherischen Taetigkeit eines anderen Angeklagten nicht ausreicht, um einen Angeklagten wegen Anklagen dieser Natur schuldig zu finden, sondern dass, abgesehen von der Kenntnis, ihm irgendeine Form positiven Verhaltens nachgewiesen werden muss. Ich darf noch einmal die folgende, bezeichnende Stelle aus dem Urteil des Militaergerichtshofes II im Falle Nr. 4 gegen Pohl und Gen. (Sitzungsbericht S.118) zitieren, die eine klare Auslegung der oben erwachten Bestimmungen des Kontrollratsgesetzes Nr. 10 gibt: - Ich zitiere -

"Der behauptete zustimmende Anteil ergibt sich aus dem vermutlichen Wissen - und aus nichts weiter. Der Ausdruck "in Verbindung stehen mit" einem Verbrechen bedeutet jedoch mehr als ein blosses Wissen. Es bedeutet mehr, als mit den Haupttaetern oder Beihilfern im gleichen Gebaeude arbeiten oder selbst in der gleichen Organisation zu sein. Das Internationale Militaergericht erkannte diese Tatsache an, als es die verbrecherische Mitgliedschaft in gewissen Organisationen in bestimmter Weise beschränkte. Der Ausdruck "zustimmender Anteil" enthaelt das Element eines positiven Verhaltens. Gemass seiner Verwendung im Text der Verfuegung bedeutet es zweifellos mehr als "nicht dagegen sein."

Ende des Zitats.

Was die Begehung eines Verbrechens durch Unterlassung anlangt, so ist in den Strafrecht aller Laender anerkannt, dass, um jemanden unter diesen Gesichtspunkt zu verurteilen, ueber jeden begruendeten Zweifel hinaus eine ihm obliegende Pflicht zu handeln, die von ihm verletzt worden ist, festgestellt werden muss. Besagte Pflicht kann entweder aus dem Gesetze oder aus einem Kontrakt bzw. einer Abmachung hergeleitet werden oder aus einer Taetigkeit des Angeklagten vor der Begehung des Verbrechens.

Ich darf in diesen Zusammenhang auf das Rechtsgutachten des bekannten deutschen Professors fuer Strafrechtslehre an der Universitaet Muenchen, Dr. Edmund MEZGER, hinweisen, das als Verteidigungsbeweisstueck 281/82, Knieriem-Dokument 40/41 vorgelegt worden ist und das mit den juristischen Voraussetzungen der strafrechtlichen Verantwortlichkeit

geschäftsführender Direktoren einer Aktiengesellschaft sich befasst.

Ich habe nicht vor, hier auf die ^{im} besagten Gutachten erörterte Frage einzugehen, ob die Tätigkeit dieser Angeklagten nach dem deutschen Strafgesetz oder nach Regeln, die dem europäischen Kontinentalgesetz oder einem noch breiteren System des Völkerrechts entnommen sind, gerichtet werden sollten. Obgleich die Verteidigung unterstellt, dass das deutsche Gesetz aus den im vorerwähnten Gutachten abgegebenen Gründen Anwendung finden sollte, ist dies fuer das hier zu diskutierende Thema, naemlich die Voraussetzungen eines durch Unterlassung begangenen Verbrechens, von keiner entscheidenden Bedeutung. Denn die Tatsache, dass solche ein Verbrechen eine Pflicht zum Handeln, die verletzt worden ist, voraussetzt, wird von dem Strafgesetz aller Kulturnationen anerkannt.

Es sollte ausserdem in gleichem Masse klar sein, dass die Frage, ob und in welchem Umfang bei diesen Angeklagten eine Pflicht zum Handeln bestand, lediglich durch Hinweis auf die Theorien beantwortet werden kann, die vom deutschen Handelsgesetz und von deutscher Gerichtspraxis, unter welchem System die IG Farben konstituiert war, und nach dem daher die Pflicht der Angeklagten zum Handeln und Eingreifen allein bestimmt werden kann, entwickelt worden sind.

Eine solche Pflicht zum Handeln lief im Falle dieser Angeklagten auf die Pflicht hinaus, die Tätigkeit eines anderen Vorstandsmitglieds zu überwachen, wenn dem letzteren, wie es bei der IG Farben ueblich war, ein besonderes Arbeitsgebiet, fuer das er verantwortlich war, uebertragen worden war.

Ich darf wiederum auf das Rechtsgutachten des Dr. Walter Schmidt, Verteidigungs-Beweisstueck 280, Knieriem-Dokument 39 und auf die eidesstattliche Erklärung des Angeklagten von Knieriem, Verteidigungs-Beweisstueck 170, Knieriem-Dokument 34, in denen der Umfang besagter Pflicht, die Pflicht der Überwachung der Tätigkeit eines Vorstandsmitgliedes durch seine Kollegen,

gruendlich erörtert wird. Ich darf diese Ausführungen wie folgt zusammenfassen:

Wenn ein Vorstandsmitglied, wie bereits dargetan, für die Tätigkeit seines Kollegen innerhalb des besonderen Arbeitsgebietes des letzteren nicht direkt verantwortlich war, dann hatte er dennoch die Verpflichtung, den Geschäftsbericht der anderen Vorstandsmitglieder nicht ganz aus den Augen zu lassen.

Dies schloss jedoch nicht die Verpflichtung ein, innerhalb des Arbeitsbereichs seiner Kollegen in die Geschäftsführung einzugreifen.

Deshalb waren die Vorstandsmitglieder nicht verpflichtet, die Tätigkeit irgendeines ihrer Kollegen durch beständige Kontrolle dieser Tätigkeit zu überwachen.

Ein solches Eingreifen und solche beständige Kontrolle kam in der Praxis der IG Farben weder vor, noch war sie erlaubt. Die Gründe liegen auf der Hand.

Einerseits wurde eine solche Kontrolle im Hinblick auf das riesenhafte Ausmass des Geschäftes der IG und die vergleichsweise kleine Zahl der Vorstandsmitglieder bestimmt über die physische Arbeitskraft irgendeines der Vorstandsmitglieder hinausgegangen sein.

Andererseits erforderte die grosse Mannigfaltigkeit der von der IG ^{und} hergestellten/verkauften Produkte ein hochentwickeltes Fachwissen, so dass ein Vorstandsmitglied, da er ja ausserhalb seines eigenen Arbeitsgebietes/^{kein Spezialist} war, auch aus diesem Grunde schon keine wirksame Kontrolle über die Tätigkeit eines anderen Vorstandsmitglieds auszuüben vermochte.

Last not least war es bei der IG bei der Auswahl leitender Persönlichkeiten, besonders von Vorstandsmitgliedern, die Übung, die höchsten Anforderungen an Charakter und fachlicher Eignung zu stellen mit dem Erfolg, dass, bis

er einen tatsächlichen Beweis des Gegenteils hatte, jedes Vorstandsmitglied sicher war, dass seine Kollegen ihren Aufgaben vollkommen gewachsen waren und sie diese in voller Beachtung aller Gesetzesvorschriften nach bestem Können in richtiger Weise ausführen würden.

Die Aufsichtspflicht, die aus den eben genannten Gründen nicht aus einer dauernden Kontrolle der Tätigkeit jedes Vorstandsmitgliedes bestand, beschränkte sich auf einen allgemeinen Rahmen. Der wesentliche Faktor war der, dass, gemäss dem wohlbegründeten Grundsatz "Menschen und nicht Massregeln", sich die Aufmerksamkeit der Vorstandsmitglieder hinsichtlich der Tätigkeit der anderen Mitglieder darauf richtete, sich davon zu überzeugen, ob ein bestimmter Kollege seine Aufgaben im allgemeinen in Übereinstimmung mit der anerkannten Praxis erfüllte oder nicht und ob er im Grossen und Ganzen seinen Aufgaben gewachsen war, oder in dieser Richtung vollständig versagte.

Diesen Feststellungen gemäss, die im vollen Einklang sowohl mit dem deutschen Handelsrecht als auch mit der in der IG geübten Praxis stehen, schloss die Aufsichtspflicht eines Vorstandsmitgliedes nicht die Verpflichtung mit ein, aus eigenem Antrieb ohne begründeten Verdacht, Erkundungen über die Tätigkeit eines anderen Vorstandsmitgliedes in dessen eigenem Bereich einzuziehen oder herauszufinden, ob dieser es unterlassen habe oder nicht, satzungsgemäss dem Gesamtvorstand irgendwelche Punkte zu unterbreiten.

Nur in den Fällen, wo eine einigermassen verlässliche Information einem der Vorstandsmitglieder erreichte oder er begründeten Verdacht schöpfte, dass ein Kollege die Aufgaben seines Spezialgebietes nicht so erfüllte, wie es seine Pflicht war, dann hatte das erwähnte Vorstandsmitglied die Verpflichtung, diese Angelegenheit zu untersuchen und die nötigen Schritte zu unternehmen.

Daraus folgt, dass eine im Recht sowohl als auch in tatsächlicher Praxis begründete Pflicht nur in dem Fall zur Entstehung kam, wenn ein Bericht eines Vorstandsmitgliedes an einen der Ausschüsse oder an den Gesamtvorstand den anderen Vorstandsmitgliedern einen vernünftigen Grund zum Argwohn gab, ob der bericht erstattende Kollege im allgemeinen oder in einem besonderen Falle seine Aufgaben richtig erfüllte.

Nachdem ich nun den Umfang und die Grenzen der Ueberwachungspflicht der Vorstandsmitglieder in Bezug auf die Thätigkeit ihrer Kollegen unter dem Gesichtspunkt der tatsächlichen Uebung und des bürgerlichen Rechts umrissen habe, darf ich mich jetzt den Schlussfolgerungen zuwenden, die daraus in Bezug auf die strafrechtliche Verantwortlichkeit von Vorstandsmitgliedern zu ziehen sind, die diese Ueberwachungspflicht verletzen.

In der Ausdrucksweise des Strafrechts wurde diese Pflicht die Verpflichtung in sich schliessen, zu handeln und dazwischen zu treten, wenn ein Bericht eines Vorstandsmitgliedes an einen der Ausschüsse oder an den Vorstand in seiner Gesamtheit anderen Vorstandsmitgliedern vernünftigen Grund zum Argwohn gab, dass sein Kollege in eine verbrecherische und ungesetzliche Thätigkeit verstrickt sei.

Daraus folgt, dass nach strafrechtlichen Grundsätzen keiner der Angeklagten dazu verpflichtet war, irgendwelche Thätigkeit seiner Kollegen auf ihre Rechtmässigkeit hin zu ueberprüfen, ohne dass ein auf einen Bericht des besagten Kollegen gestützter vernünftiger Grund zum Argwohn vorgelegen hätte.

Um deshalb irgend einen der Angeklagten unter dem Gesichtspunkt eines Unterlassungsverbrechens zu verurteilen, begangen durch Verletzung seiner Ueberwachungspflicht, muss zuerst ueber einen vernünftigen Zweifel hinaus festgestellt werden, dass dieser Angeklagte auf Grund seiner Kenntnis von der verbrecherischen Betätigung eines anderen Angeklagten einen vernünftigen Grund zum Argwohn hatte, der ihn verpflichtet hätte, Erhebungen darueber anzustellen und dazwischenzutreten.

Das genuegt jedoch noch nicht. Da nach dem Strafrecht aller Kulturstaaen der ununterbrochene Kausalzusammenhang bewiesen werden muss, muss die Anklagebehoerde weiterhin beweisen, dass der durch die Taetigkeit seiner Kollegen verursachte strafbare Erfolg vermieden worden waere, wenn der Angeklagte seine Ueberwachungspflicht erfuehlt und dazwischentreten waere. Daraus ergeben sich drei wichtig Schlussfolgerungen:

- Erstens: Wenn der strafbare Erfolg schon herbeigefuehrt wurde, bevor dem Angeklagten Grund zu Argwohn gegeben wurde, kann er nicht verurteilt werden.
- Zweitens: Dasselbe gilt, wenn sein Dazwischentreten den strafbaren Erfolg nicht verhuetet haette, da dieser trotzdem von den Stellen der NSDAP erzwungen worden waere.
- Drittens: Das Gleiche gilt, wenn das Dazwischentreten des Angeklagten mit Ruecksicht auf seine tatsaechliche Stellung im Vorstand erfolglos gewesen waere.

Nachdem die Anklage eine Verletzung der Pflicht zum Handeln und Dazwischentreten, d.h. eine Unterlassung und den Zusammenhang dieser Unterlassung mit dem strafbaren Erfolg festgestellt hat, muss die Anklage, last not least, beim Angeklagten das Bewusstsein der Strafbarkeit in Bezug auf besagte Unterlassung nachweisen. Und hier haben wir einen grundlegenden Unterschied zwischen dem buergerlichen und dem Strafgesetz, mindestens soweit es sich um Anklagen dieser Art handelt.

Waehrend nach dem Buergerlichen Gesetz einfache Fahrlaessigkeit bei Ausuebung der Aufsichtspflicht gemuegenden Grund fuer eine Schadenersatzklage gegen einen solchen Angeklagten waere, kann ein Angeklagter vor diesem Tribunal wegen der schwebenden Anklagen nur dann fuer schuldig befunden werden, wenn er besagte Pflicht vorsaeztlich und absichtlich verletzt hat. Deshalb kann ein Angeklagter nicht fuer schuldig befunden werden, wenn er entweder auf Grund von Fahrlaessigkeit etwas uebersah, was seinen Argwohn haette erregen sollen oder wenn er dadurch nachlaessig handelte, dass er die Angelegenheit nicht untersuchte, weil er aus

Fahrlaessigkeit annahm, dass der strafbare Erfolg schliesslich doch nicht eintreten werde.

Eine vorsatzliche und absichtliche Verletzung der Verpflichtung zu handeln und einzuschreiten, schliesst daher ein, dass der Angeklagte sich darueber klar war, dass der strafbare Erfolg eintreten wuerde, falls er - der Angeklagte - nicht einschreiten wuerde oder dass der Angeklagte wenigstens die Moeglichkeit eines solchen Erfolges bedachte - und sie billigte. Daher ist in diesem Zusammenhang ein "Augenzudruecken" oder "ein Abwenden" - um zwei bei der Anklagebehoerde beliebte Phrasen zu gebrauchen - nur dann von Bedeutung, wenn der Angeklagte sich wenigstens die Moeglichkeit eines strafbaren Erfolges und seiner Vermeidung durch sein Einschreiten vergegenwaertigt hat und ausserdem von seinem Verhalten der unbestreibare Schluss gezogen werden kann, dass er den erwahnten Erfolg gebilligt habe. Andernfalls kann keine vorsatzliche und absichtliche Unterlassung nachgewiesen werden.

Alle diese Voraussetzungen eines auf das Verbrechen gerichteten Vorsatzes seitens eines einzelnen Angeklagten müssen daher von der Anklagebehoerde ueber jeden Zweifel hinaus bewiesen werden, wenn irgendein Angeklagter wegen seines Nichteingreifens bei Vorliegen einer strafbaren Handlung eines anderen Angeklagten verurteilt werden soll, unter der Voraussetzung natuerlich, eine solche Handlung sei auch bewiesen worden.

Die Verteidigung nimmt den Standpunkt ein, dass die Anklagebehoerde keine der erwahnten Voraussetzungen eines Verbrechens, das durch eine Unterlassung begangen wurde, bezueglich irgendeines Angeklagten nachgewiesen habe.

Ein Ueberblick dieser Art wuerde nicht vollstaendig sein, ohne die Erwahnung eines bedeutenden Faktors, welcher die Verantwortlichkeit der Angeklagten als Vorstandsmitglieder sowohl im Falle eines durch eine positive Handlung oder durch Unterlassung begangenen Verbrechens einschraenkt. Ich denke dabei an die Schutzbestimmungen des Notstandes, die auch als eines der Grundprinzipien

des Strafrechtes aller zivilisierten Nationen angesehen werden muss, die den auf das Verbrechen gerichteten Vorsatz eines Angeklagten ausschliesst.

Der Charakter der Schutzbehauptung des Notstandes und der Grundsatz, der dieser Schutzbehauptung zu Grund liegt, koennen meiner bescheidenen Meinung nach nicht besser und nicht genauer ausgedrueckt werden, als es in den folgenden Sactzen aus Wharton's Criminal Law, Band I, Kapitel VII, Abschnitt 126 und Kapitel XIII, Abschnitt 384, geschehen ist. Ich zitiere:

" Die Tatsache des Notstandes kann als Schutzbehauptung geltend gemacht werden, falls bewiesen wird, dass die zur Last gelegte Handlung begangen wurde, um einen sowohl schweren wie nicht wieder gutzumachenden Rechtsnachteil abzuwehren, ferner, dass es keine andere zureichende Moeglichkeit gab, sie zu vermeiden, und dass die Abwehr nicht im Missverhaeltnis zum angedrohten Rechtsnachteil stand."

" Notstand ist ein Rechtfertigungsgrund, da niemand ohne den auf ein Verbrechen gerichteten Vorsatz an diesem schuldig sein kann. Liegt unwiderstehlicher, physischer Zwang vor, dann fehlt der Wille des Handelnden fuer die Tat."

Ende des Zitats.

Es wurde nun von der Anklagebaehorde vorgebracht, dass s gemass der Bestimmung des Artikels II, Abschnitt 4, Untertheilung (b) des Kontrollratsgesetzes Nr.10 die Tatsache, dass jemand unter dem Befehl seiner Regierung oder seines Vorgesetzten gehandelt hat, ihn nicht von der Verantwortlichkeit fuer ein Verbrechen befreit.

Die Verteidigung steht jedoch auf dem Standpunkt, dass die vorerwaehnte Bestimmung, die sich nur gegen den Einwand von hoeheren Befehl wendet, die Schutzbehauptung des Notstandes nicht aufheben kann, da diese ein Grundprinzip des Strafrechtes aller zivilisierten Nationen ist. Ich weise noch einmal auf Wharton's Criminal Law hin, das in Band I, Kapitel 126, die folgende bedeutsame Feststellung enthaelt; ich zitiere: -

Daraus folgt, dass Notstand als Verteidigungseinwand auch die vorerwähnte Bestimmung des Kontrollratsgesetzes Nr. 10 aufhebt und es ist in dieser Hinsicht sehr bedeutsam, dass der Gerichtshof Nr. IV im Fall 5 gegen Flick und Gen. denselben Standpunkt vertreten hat. Ich möchte aus dem Urteilspruch die folgende Stelle zitieren (Engl. Protokoll 10992) deutsch 10734): - ich zitiere:

"Unserer Ansicht nach sollen diese Bestimmungen nicht dazu dienen, einen Angeklagten der Schutzbehauptung des Notstandes zu berauben, wenn es sich um Umstände handelt, wie sie in diesem Falle ersichtlich geworden sind.... Man könnte dem erkennenden Gericht den Vorwurf machen, Rache statt Gerechtigkeit zu üben, falls es ihnen die Schutzbehauptung des Notstandes, die hier fuer die Angeklagten geltend gemacht worden ist, nicht zugestehen wollte. Dieser Rechtsgrundsatz ist in erheblichem Umfange in den amerikanischen und englischen Gerichtshöfen zur Anwendung gebracht und ist auch anderweitig zur Anwendung gebracht worden."

Ende des Zitats.

Auf Grund der vorerwähnten Feststellungen verlangt die Schutzbehauptung des Notstandes, dass der Angeklagte bei seinem Handeln einer "klaren und gegenwärtigen Gefahr" ausgesetzt war. Die Verteidigung nimmt den Standpunkt ein, dass die besonderen Bedingungen, unter denen alle die Angeklagten im früheren Reichsgebiet nach der Machtergreifung durch die Nazis lebten, an und fuer sich eine "klare und gegenwärtige Gefahr" bildeten und dass daher die Angeklagten auf Grund der erwähnten besonderen Umstände die Schutzbehauptung des Notstandes in all den Fällen vorbringen koennen, in denen die Angeklagten durch die Unterlassung einer besonderen Handlung oder durch ein Eingreifen in die Handlungsweise einer anderen Person oder Personengruppe sich in deutlichem Gegensatz zu den Massnahmen oder zu einem von der Nazi-Behoerde vertretenen Programm gestellt haetten.

Dies gilt insbesondere hinsichtlich des sogenannten Nazi-Sklavenarbeits-Programms mit all seinen Folgen, kann jedoch auch hinsichtlich anderer Handlungen, die unter andere Punkte der Anklageschrift fallen, vorgebracht werden. Ich möchte wieder in diesem Zusammenhange auf das Urteil im Flick-Prozess hinweisen, da meiner Meinung nach die besonderen Umstände,

unter denen die deutschen Industriellen einschliesslich dieser Angeklagten damals in Deutschland lebten, nicht nachdrücklicher als in den folgenden Abschnitt auf Seite 10993 und 10994 des englischen Protokolls beschrieben werden können. Ich zitiere:

"Wir haben bereits das Schreckenregime des Reiches erörtert. Die Angeklagten lebten im Reichsgebiet. Das Reich war durch seine Massen von Vollzugsbeamten und Gestapo "allgegenwärtig", jederzeit einsatzbereit und in der Lage, unverzüglich grausame Strafen gegen jedermann zu verhängen, der etwas tat, das als Sabotage oder Behinderung der Ausführung von Regierungsbestimmungen oder Erlassen hätten ausgelegt werden können."

Ende des Zitats.

Nachdem ich nun nach besten Kräften das Gebiet der allgemeinen Verantwortlichkeitstheorie behandelt habe, möchte ich zur Erleichterung des Hohen Gerichtshofes meine Darlegungen im folgenden kurz zusammenfassen:

Erstens: Nach den Vorschriften des Strafrechts gibt es keine kollektive Verantwortlichkeit.

Eine strafbare Schuld kann sich nur auf eine Person beziehen.

Zweitens: Bei grossen deutschen Aktiengesellschaften, die in ihrem Direktorium mehrere Vorstandsmitglieder haben, war die Aufteilung von Arbeitsgebieten unter den verschiedenen Vorstandsmitgliedern gebräuchlich und zulässig und zwar sowohl nach der vorliegenden Praxis als auch nach dem Gesetz.

Drittens: In der IG Farben wurde diese Aufteilung nach Arbeitsgebieten und Verantwortlichkeiten wegen der besonderen Umstände, die ich dem Hohen Gerichtshof in grossen Zügen darzulegen mir erlaubt habe, in einem besonders grossen Umfang durchgeführt.

Viertens: Nach Gesetz und Praxis bestand fuer die Angeklagten keine Verpflichtung, die Taetigkeit eines ihrer Kollegen dauernd ohne ersichtlichen Grund zu kontrollieren, angesichts der Tatsache, dass bei der IG die Praxis herrschte, bei der Auswahl leitender Persoenlichkeiten an Charakter- und beruflicher Eignung die hoechsten Anforderungen zu stellen, konnte jeder Angeklagte sich auf das korrekte Verhalten seiner Kollegen in geschaeftlicher Hinsicht verlassen. Andererseits war jeder Angeklagte bis zur aussersten Grenze seiner Arbeitskraft durch die ihm zugewiesenen Aufgaben in Anspruch genommen und hatte daher an erster Stelle danach zu trachten, seine eigene Arbeit ordentlich und korrekt auszufuehren.

Fuenftens: Was Berichte und Entscheidungen des Gesamtvorstandes oder des TEA oder des kaufmaennischen Ausschusses anlangt, so waren fuer die Angeklagten, die mit diesen Dingen nicht vertraut waren, nur jene Punkte von Bedeutung, die in den Berichten erwaeht oder besprochen wurden. Ueberdies musste angenommen werden, dass die auf Erfahrung beruhende Kenntnis des Vortragenden Vorstandsmitgliedes und seine Vertrautheit mit den behandelten Thema die seiner Kollegen uebertref.

Sechstens: Die Anklagebehoerde hat nicht nachgewiesen, dass irgendeiner der Angeklagten in einem besonderen Falle einen ersichtlichen Grund hatte, der sich entweder aus den besonderen Umstaenden des Falles ergeb oder in der Person eines anderen Vorstandsmitgliedes lag, die besondere Handlungsweise des erwaehten Kollegen, die jetzt unter einen der Anklagepunkte faellt,

fuer anstoessig zu betrachten und dessen Handlungsweise demgemass zu ueberpruefen. Aus diesen Gruenden hat die Anklagebehörde in keinem Falle die Verletzung der Ueberwachungspflicht und der Verpflichtung, dazwischentreten, und daher auch kein "Augenzudruecken" oder "Abwenden", nachgewiesen.

Siebentes: Die in der Anklage aufgefuehrten Verbrechen koennen nur vorsatzlich und absichtlich und nicht aus Fahrlaessigkeit begangen werden. Folglich koennte ein "Augenzudruecken" und ein "Abwenden" nur dann strafbar sein, wenn der Angeklagte wenigstens die Moeglichkeit eines verbrecherischen Erfolges und dessen Verhuetung durch sein Dazwischentreten erkannt haette und wenn er ueberdies den erwaehten Erfolg gebilligt haette.

Achtens: Die Angeklagten koennen die Schutzbehauptung des Notstandes in all jenen Faellen verbringen, wo die Unterlassung einer bestimmten Handlung oder das Eingreifen in solch eine Handlungsweise eine klare Opposition gegen die Massnahmen der Nazi-Behoerden bedeutet haette.

Neuntens: Die Verteidigung steht daher auf dem Standpunkt, dass selbst wenn entgegen ihrer Auffassung - gewisse Handlungen eines oder mehrerer Angeklagten, die daran direkt beteiligt waren, als verbrecherisch angesehen werden koennen, in keinem dieser Faelle eine schuldhaftige Verantwortlichkeit der anderen Angeklagten auf Grund der vorerwaehten Feststellungen angenommen werden kann.

Damit, meine Herren Richter, moechte ich mein Plaidoyer ueber die allgemeinen Themen der Erheblichkeit des Anklagematerials zu Punkt I und 7 und der allgemeinen Theorie der Verantwortlichkeit abschliessen. Ich fuerchte, dass ich die Zeit dieses Hohen Gerichts durch ziemlich ausfuehrliche rechtliche Auseinandersetzungen in Anspruch genommen habe, aber ich war der Meinung, dass es angebracht war, nach besten Kraeften dies zu tun, da nach meiner Ansicht die ungeheure Flut von Beweismaterial, die in diesen vergangenen Monaten ununterbrochen hereinstroemte, bisweilen gewisse einfache und grundlegende Rechtssatze nahezu verschlang, die schon vor langer Zeit aufgestellt wurden von Maennern, die frei waren von Rechengefuehlen und ergeben jenem hohen Ideal, das so oft missbraucht worden ist, fuer das so Viele das letzte velle Mass der Hingebung geleistet haben und das allein in uns die Hoffnung wiedererwecken kann, dass Menschenwuerde trotz allem nicht untergeht auf dieser Erde und dass diese unsere gequaelte Welt eine Wiedergeburt der Freiheit erleben moege,

das Ideal der Gerechtigkeit.

31. Mai 1948

Ich, A. EHRMANN, ETO-20 116, bestätige hiernit, dass ich vorschrifts-
mässig bestellter Übersetzer der deutschen und englischen Sprache
bin und dass das Vorstehende eine wahrheitsgemässe und richtige
Übersetzung des Dokuments: Abschliessende Ausführungen des Verteidigers
Dr. Wolfram von METZLER fuer alle Angeklagten in Fall 6, Teil I und
II, darstellt.

A. EHRMANN
ETO-20 116

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■ GRUNDSÄTZLICHE RECHTSFRAGEN ■

in Namen aller Angeklagten

vorgelegt in Case No VI (I.O. Farbon)

von

Professor Dr. Eduard WAHL
Special Counsel for all Defendants

Esam



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A. Es handelt sich um ein
amerikanisches Gericht
mit internationalem
Auftrag.

§ 2. Uneinheitliche Stellungnahme des IMT-Urteils.

Die historischen Vorgänge, die zu den Nürnberger Prozessen geführt haben, werden als bekannt vorausgesetzt. Sie haben ein eigentümliches Schillern in der Beurteilung der Nürnberger Gerichte zur Folge gehabt, die bald als internationale, bald als Besatzungsgerichte der einzelnen Besatzungsmächte erscheinen, wobei im letzteren Falle bald die Ausübung der deutschen Staatsgewalt, bald die Ausübung der Rechte der Besatzungsmächte in den Vordergrund gestellt wird. Das IMT-Urteil verwendet selbst nebeneinander Argumente, die die verschiedenen Auffassungen widerspiegeln und hat damit die Divergenz vorweg genommen, die auch die Stellungnahmen der jetzigen Militärgerichte kennzeichnet. Es heisst im IMT-Urteil, Seite 58 deutscher Text:

"Die Ausarbeitung des Statuts geschah in Ausübung der souveränen Macht der Gesetzgebung jener Staaten, denen sich das Deutsche Reich bedingungslos ergeben hatte, und das nicht angezweifelte Recht jener Länder, für die besetzten Gebiete Gesetze zu erlassen, ist von der zivilisierten Welt anerkannt worden."

Darin wird die Gesetzgebungsbefugnis der Kontrollmächte für Deutschland betont, also die Ausübung der deutschen Staatsgewalt durch die beteiligten Mächte in den Vordergrund gerückt.

Andererseits stellt das IMT-Urteil in den einleitenden Sätzen fest, dass die Vollmacht des Gerichtes auf dem Londoner Abkommen vom 9. August 1945 beruhe, nach dessen Artikel 6 jedem

UN-Mitglied dem Abkommen beitreten konnte, eine Befugnis, von der 19 weitere Staaten - übrigens nicht alle ehemaligen Gegner Deutschlands - Gebrauch gemacht haben. Damit ist die völkerrechtliche Natur des IMT herausgestellt.

Endlich wird auf Seite 59 gesagt:

"Die Signatarmächte errichteten diesen Gerichtshof, setzten das Recht fest, das er anzuwenden hat und erliessen Bestimmungen für die ordentliche Führung des Prozesses. Damit haben sie gemeinsam das getan, was jede einzelne von ihnen allein hätte tun können."

Das zeigt, dass das IMT selbst nicht der Vorstellung entraten kann, dass die 4 Signatarmächte, also die Besatzungsmächte, nur das gemeinsam durchzuführen beschlossen haben, was jeder auch allein hätte tun können. Denn die Betrachtung, die die Kompetenz des Gerichtes einfach aus dem Londoner Abkommen als einem völkerrechtlichen Vertrag ableitet, vermöchte die Anomalie nicht zu erklären, dass Deutschland an diesem Vertrag nicht teilgenommen hat, also mit Recht sich über diesen "Vertrag zu Lasten Dritter" beschweren könnte. Es liegt auch keine Veranstaltung der UN vor, sondern der Beitritt wurde deren Mitgliedern bloss freigestellt. Der im ersten der obigen Zitate angedeutete Gedanke, dass die Signatarmächte beim Abschluss des Londoner Abkommens Deutschlands Souveränitätsrechte ausgeübt hätten, liefe auf die Anerkennung eines nach dem Recht der zivilisierten Nationen unsittlichen und daher nichtigen Kontrahierens des Vertreters mit sich selbst hinaus¹⁾.

1) Growe-Küster "Nürnberg als Rechtsfrage", Stuttgart 1947, Seite 67: "Ich würde in einem solchen Abkommen, bei dem eine Macht einmal kraft ihrer eigenen, zugleich aber auch kraft der von ihr ausgeübten Staatsgewalt eines besiegten Landes beteiligt ist, ein unzulässiges Kontrahieren mit sich selbst sehen."

§ 3. Strafrecht entsprechend den anerkannten Grundsätzen der zivilisierten Nationen. * Aber gleichviel, welche Nuance die richtige ist, bei dem Gegenstand der Anklage handelt es sich jedenfalls um völkerrechtliche Delikte. Dies gilt sowohl für den alten Kern der sogenannten Kriegsverbrechen, die in den Haager und Genfer Konventionen enthalten sind und in den Militärstrafgesetzen aller zivilisierten Staaten ihren Niederschlag gefunden haben, als auch für die neuen Delikte, die in Analogie zu diesen behandelt werden sollen. Deswegen hält es die Verteidigung, zumal die Grundsätze des DM-Urteils durch die Ordinance No 7 für bindend erklärt worden sind, durchaus für vertretbar, dass die allgemeinen Strafrechtsnormen nach den bewährten Methoden völkerrechtlicher Lückenergänzung den Grundsätzen der zivilisierten Nationen entnommen werden. Denn darüber ist kein Zweifel: Selbst, wenn es sich um amerikanische Gerichte handelt, und das ist die Auffassung der Verteidigung, so handelt es sich doch um die Abwicklung eines Unternehmens, das in London durch ein internationales Abkommen in Gang gesetzt wurde und dessen einngemäße Durchführung nur bei Beachtung internationaler Rechtsgrundsätze gewährleistet erscheint. In dem Aufsatz "Rechtsvergleichung und internationale Rechtsprechung" (Zeitschrift für Auslands- und Internationales Privatrecht, 1. Jahrgang 1927, S. 5 ff) hat der bekannte Romanist und Internationalist Ernst Rabel, früher Professor in Berlin, jetzt in Ann Arbor (Michigan) die theoretischen Folgerungen aus der internationalen Gerichtspraxis gezogen, die der Abwicklung des Versailler Vertrages gedient hatte. Der Kernsatz für die Auslegung internationaler Abkommen, für die die "national bestimmte Vorstellungswelt der Verfasser der Verträge" und zum Teil auch der "nationale Ursprungscharakter der allgemeinen Rechtsprinzipien" eine Rolle spielt, lautet folgendermaßen (S. 17):

"So sind die Rechtsbegriffe des Staatsvertrages und seine einheitliche Norm durch sinngemässes rechtsvergleichendes Operieren zu finden, immer wohl unter Aussebelung der bloss technischen Ausgestaltung, aber bald durch Enthüllung der gemeinsamen sogenannten "Idee" der Rechtsinstitution, bald durch Bevorzugung eines landesrechtlichen Kriteriums." Dazu kommt die Ausfüllung der Lücken des Völkerrechtes durch Bezugnahme auf die von den zivilisierten Nationen anerkannten allgemeinen Rechtsgrundsätze.

Es fragt sich höchstens, ob die Sätze über das eigentliche internationale Strafrecht, also den Konflikt der nationalen Strafrechtsordnung hier nicht, ähnlich wie das internationale Privatrecht bei den Gemischten Schiedsgerichten die massgebende Rechtsordnung bestimmte, zur Anwendung des deutschen Rechtes hätten führen müssen. Für die Angeklagten, die sich plötzlich anderen als ihren angestammten Rechtsgrundsätzen gegenüber sehen könnten, wäre die Anwendbarkeit des deutschen Rechtes von grosser Bedeutung. Aber in der massvollen Weise, in der das DM-Urteil die Schuldfrage unter starker Beachtung der kontinentalen Rechte und damit auch des deutschen Rechtsdenkens geklärt hat, sind auch die deutschen Belange gewahrt, zumal jede ins Gewicht fallende Abweichung des deutschen Rechtes in Anbetracht des hohen Standes seiner Entwicklung die Feststellung eines wirklich internationalen Satzes ausschliessen würde. Natürlich ist sich die Verteidigung darüber klar, dass es nach bisheriger Auffassung überhaupt kein internationales Strafrecht gibt, das nicht durch Transformation durch ein nationales Landesrecht hindurchgegangen und damit auch aus diesem Landesrecht zu ergänzen wäre. Aber es handelt sich oben um ein neuartiges Phänomen, für das es im bisherigen Völkerrecht an jedem Vorgang fehlt.

Trotzdem sei im folgenden die Auffassung der Verteidigung erneut dargelegt, dass es sich um ein amerikanisches Militärgo-

richt mit einem besonderen Auftrag des Kontrollrats, insoweit also mit einem internationalen Auftrag handelt.

§ 4. Es handelt sich nicht um deutsche Gerichte. - Es handelt sich bei den Nürnberger Gerichten um military tribunals. Deutsche Militärgerichte kann es schon deshalb nicht mehr geben, weil auf Grund der Kapitulation und der Gesetzgebung des Kontrollrats es keine deutschen militärischen Institutionen mehr gibt. Es handelt sich vielmehr um Militärgerichte, die auf Grund der militärischen Besetzung Deutschlands durch die Alliierten eingerichtet worden sind, und zwar zum Vollzug einer Aufgabe, die typischerweise jede Besatzungsmacht für sich in Anspruch nimmt: Kriegsverbrechen, die von Angehörigen des besetzten Landes begangen sind, der Bestrafung zuzuführen. Zwar kann nicht geloungnet werden, dass Verstöße gegen die Haager Landkriegsordnung auch von dem Staat geahndet werden können, dem der betreffende Verletzer angehört. Ja, in dem Haager Abkommen ist diese Art der Sanktion in erster Linie vorgesehn, indem die Vertragsstaaten sich zur Einführung entsprechenden internen Strafrechtes verpflichten. Aber die in Nürnberg tätigen Militärgerichte sind deswegen keine deutschen Gerichte. Nach dem Kontrollratsgesetz können die deutschen Gerichte nur ausnahmsweise mit der Aburteilung der Kriegsverbrecher beauftragt werden, und zwar typischerweise nur dann, wenn auch die Verletzten Deutsche oder Staatenlose sind, woraus sich ergibt, dass die normalerweise zuständigen Gerichte jedenfalls keine deutschen Gerichte sind. Man muss sich oben darüber klar sein, dass die Besatzungsmächte einerseits gleichsam als Treuhänder die Rechte der deutschen Reichsregierung ausüben, andererseits aber auch die Befugnisse der militärischen Besatzungsmacht wahrnehmen. Bei unbefangener Würdigung werden sie in Sinne der zweiten Alternative tätig, wenn sie vor eigenen Militärgerichten die Kriegsverbrecher in Sinne des Kontrollratsgesetzes Nr. 10 zur

Verantwortung stehen, die im Regelfall sich gegen die Besatzungsmächte oder ihre Verbündeten vorgangen haben.

§ 5. Es handelt sich auch nicht um Gerichte des Kontrollrats. - Man kann sich also höchstens die Frage stellen, ob die Nürnberger Militärgerichte Gerichte des Kontrollrates oder der amerikanischen Besatzungsmacht sind. Zweifellos haben sie einen

Auftrag des Kontrollrates zu vollziehen, aber bei allen zusammengesetzten Territorien ist damit noch nicht gesagt, dass die von der Zentrale gestellten Aufgaben auch durch Organe der Zentralinstanz ausgeführt werden. Auch Organe der Einzelgebiete können für diese Aufgaben bestellt werden.

§ 6. Vergleich mit dem amerikanischen Bundesstaatsrecht. - Das gilt z.B. auch im amerikanischen Bundesstaatsrecht. So hat der Supreme Court der Vereinigten Staaten in *Palle Collector v. Day* 11 Wall. 113 (1871) bemerkt, dass nur wenige Artikel der Verfassung der Vereinigten Staaten "could be carried into practical effect without the existence of the States", d.h. die Einzelstaaten stellen die Organe, die auch die Aufgaben des Bundesrechtes zu verwirklichen haben. Dies gilt besonders für die Gerichte. Mathews, *American State Government* 1925, Bd. 1, S. 15 führt aus: "The State Courts are often called upon to interpret, apply, and enforce the constitution and laws of the United States, both judicially and administratively." Der Autor beruft sich auf *Clafflin v. Housman* 93 U S 130: "The laws of the United States are laws in the several States and just as much binding on the citizens and courts there of as the state laws are." In *Second Employer's Liability Case* wird noch klarer gesagt: "The fact that a state court derives its existence and functions from the states law" ist kein Grund dafür, warum nicht das Recht der Vereinigten Staaten von ihnen angewendet werden soll. Die Figur ist bei allen zusammengesetzten mehr oder weniger dieselbe. Mit Ausnahme des Reichsgerichtes

waren bis 1935 alle deutschen Gerichte entweder preussische, bayerische, württembergische usw. Gerichte und dabei war die Masse des von ihnen anzuwendenden Rechtes Reichsrecht, d.h. Recht, das das Deutsche Reich geschaffen hatte.

So ist die Lage auch hier. Der Kontrollrat beschloss, die deutschen Kriegsvorbereiter zur Verantwortung zu ziehen, er hatte aber keine eigenen Organe, und so übernahmen es die Zonenbefehlshaber entsprechend ihrem angestammten Militärrecht, Gerichte im Rahmen ihrer militärischen Funktionen zu errichten, die diese Aufgabe durchzuführen hatten. Hatten sie bei dem IMT-Vorfahren, um die Worte des IMT-Urteils zu wiederholen, bei der Errichtung jenes Gerichtshofes gemeinsam das getan, was jeder einzelne von ihnen hätte allein tun können, so sind nunmehr anstelle eines gemeinsamen Gerichtes die Gerichte der einzelnen Besatzungsmächte getreten.

§ 7. Die politische Entwicklung seit dem Potsdamer Abkommen. - Ob eine Behörde, die in einem zusammengesetzten Staatengebilde tätig wird, Zentralbehörde oder Instanz des Einzelterritoriums ist, muss also im Einzelfall geprüft werden und ist nach den rechtlichen Merkmalen zu beurteilen, die bei der Konstituierung der betreffenden Organe hervortreten. Gerade nachdem in Nürnberg zuerst das Internationale Militärgericht mit Richtern aller am Kontrollrat beteiligten Staaten getagt hat, zeigt die jetzige Lösung offenbar eine Verlagerung des Schwerpunktes zu den einzelnen Besatzungsmächten. Der Übergang der Jurisdiktion für die Bestrafung von Kriegsvorberechern von IMT auf die Militärgerichte der vier Besatzungszonen steht im Einklang mit der allgemeinen politischen Entwicklung, welche auch in den gemeinsamen Angelegenheiten der Kontrollmächte in zunehmender Masse zu ihrer Verselbständigung geführt hat. Zahlreiche deutsche Rechtsgelahrte haben darauf hingewiesen, dass

die Zonengrenzen nicht mehr bloss Verwaltungsdistrikte, sondern mehr und mehr Souveränitätsbereiche von einander abstecken. Diesen Aeusserungen ist umso grössere Bedeutung beizumessen, als die deutschen Juristen den von ihnen zutiefst bedauerten Zerfall der deutschen Einheit am wenigsten leichtfertig feststellen. Jedenfalls hat der Kontrollrat im Gesetz Nr. 10 nicht einmal allgemeine Richtlinien für die Errichtung, Besetzung und Verfahrensweise der neuen Gerichte zur Aburteilung von Kriegsverbrechen erlassen oder sich einen Einfluss auf die Abwicklung der Verfahren gesichert, sondern nach Art. II, 2 ist es Sache des Zonenbefehlshabers, für seine Zone das Gericht zu bestimmen sowie die dabei anzuwendende Verfahrensordnung zu erlassen. Das ist dann auch in den vier Zonen geschehen und gerade die amerikanische Verfahrensordnung, die in der Ordinance No 7 enthalten ist, sieht in Art. II c vor, dass der Zonenbefehlshaber nach seinem Ermessen das Ansuchen einer anderen Besatzungsmacht um Beteiligung an einem Verfahren seiner Zone ablehnen kann, weil der nationale Charakter der neugeschaffenen Militärgerichte der einzelnen Zonen unbedingt den Ausgangspunkt bildet.

§ 3. Die amerikanischen Merkmale der jetzigen Militärgerichte. - Die Militärgerichte der amerikanischen Zone sind ausschliesslich mit amerikanischen Richtern besetzt. Von ihnen wird die Anklage im Namen der USA durch den Hauptanklagevertreter für Kriegsverbrechen erhoben, der von dem Militärgouverneur gemäss Ziffer III des Erlasses Nr. 9679 des Präsidenten der USA vom 16. 1. 46 ernannt ist. Im Falle einer Verurteilung zum Tode bedarf das Urteil des Gerichtes der Bestätigung durch den amerikanischen Militärgouverneur (Art. 26); diesem steht auch das Recht zu, von dem Gericht festgesetzte Strafen zu mildern (Bognadigungsrecht, Art. 15 und 17). Die Strafvollstreckung liegt entsprechend in den Händen von Angehörigen der amerikanischen

Besatzungsarmee. Charakteristisch sind auch das Sternenbanner im Gerichtssaal sowie die Worte, mit denen der Gerichtsmarschall die Sitzung täglich eröffnet: "Gott schütze die Vereinigten Staaten von Amerika und dieses Hohe Gericht!". Endlich ist darauf hinzuweisen, dass der amerikanische Kongress über die Finanzierung der Nürnberger Prozesse Verhandlungen geführt hat, sie also als amerikanische Veranstaltungen ansieht.

Es handelt sich also nach der Struktur dieser Gerichte um sogenannte Military Commissions im Sinne des amerikanischen Wehrrechtes, etwa des Werkes von William Winthrop über "Military Law and Precedents", Washington 1920, S.836 ff., wo besonders hervorgehoben wird, dass die Military Commissions durch besondere statutes näher geregelt werden können. Nur von dieser Auffassung aus lässt sich zwanglos der Zustand und die Vorfahrensweise der jetzt tätigen Nürnberger Militärgerichte erklären.

§ 9. Auseinandersetzung mit den Gegengründen der Anklagebehörde. - Die Anklagebehörde nimmt zwar einen anderen Standpunkt ein: die Tatsache, dass alle Richter und alle Ankläger Amerikaner sind, erklärt sich daraus, dass ein Staat sich damit einverstanden erklären könne, dass eine fremde Regierung vor seinen Gerichten die Anklage erhebe oder Richter ihrer Nationalität in sie abordne. Aber von einer solchen Staatspraxis ist nichts bekannt. Um ein Beispiel zu bilden, wenn etwa vor dem Krieg die französische Regierung ein Interesse daran gehabt hätte, einen bestimmten Deutschen durch deutsche Gerichte bestrafen zu lassen, so würde die deutsche Regierung niemals auf den Gedanken gekommen sein, ihr Einverständnis damit zu erklären, dass die französische Regierung, also ein französischer Staatsanwalt, vor deutschen Gerichten die Anklage erhebt, sondern die deutsche Behörde hätte in ihrem eigenen Namen, um den Franzosen gefällig zu sein, die Anklage erhoben. Auf unseren

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Fall übertragen. Wenn die Amerikaner ein Interesse daran haben, dass vor einem Kontrollratsgericht bestimmte Deutsche verfolgt werden, wäre es nicht möglich, dass die Kontrollrats-Regierung ihre Anklagebehörde anwies, im Interesse Amerikas die Anklage zu erheben, aber nur deshalb, weil es keine Anklagebehörde des Kontrollrates gibt, und damit kommen wir zum entscheidenden Punkt: Die Zonen-Befehlshaber stellen die verwaltungsmässige Organisation ihrer Besatzungsarmeen zur Verfügung für die Aufgaben des Kontrollrates. Dadurch werden diese aber nicht zu Organen des Kontrollrates, sondern sie bleiben, was sie sind, amerikanische, französische, englische, russische Gerichte. Aus den Angaben der Anklagebehörde in dem ^{unten} zitierten Schriftsatz 1) geht weiter hervor, dass das Modell für den Kontrollrat die Military Commissions gewesen sind, die General Eisenhower durch Anordnung vom 25. August 1945 eingesetzt hatte. Man kann also wirklich, ohne den Dingen Zwang anzutun, nicht behaupten, dass die hier tagenden Militärgerichte keine amerikanischen seien. Professor Herbert Kraus hat in seinem Vortrag "Gerichtstag in Nürnberg" die gleiche These vertreten. Die Ordinance No 7 hebt zudem vollkommen richtig an erster Stelle die Vollmachten des Militärgouverneurs hervor (pursuant to the powers of the Military Governor) und erwähnt erst an zweiter Stelle den Auftrag des Kontrollrates.

§ 10. Zusammenfassung. - Nach allem sind bei der Aburteilung von Kriegsverbrechen nach den massgebenden Bestimmungen folgende Gerichte zu unterscheiden:

1. Das internationale Militärgericht (Fall Nr. 1).
2. Die Militärgerichte der einzelnen Besatzungszonen, die in Nürnberg die Fälle 2 ff bearbeiten.
3. Deutsche Gerichte, denen gemäss Art. III 1 B,

Kontrollratgesetzes Nr. 10, die Strafverfolgung

1) Answer and memorandum in opposition to defendants' Motion to dismiss No. IV and motion to strike No. I vom 24. XI. 47 in Flick-Fall, S. 17 ff und anderwärts (Deutsche Ausgabe)

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von Kriegsverbrechern in gewissen Fällen
durch die Zonenbefehlshaber übertragen
werden kann.

Ad 1.

Das IMT basiert auf einem Vertrag der vier Besatzungsmächte und war von ihnen gemeinsam eingesetzt und besetzt. Das Begnadigungsrecht stand daher dem Kontrollrat zu. Das Begnadigungsrecht lässt erkennen, in wessen Namen Recht gesprochen wird: Es ist eine gesicherte Erkenntnis der Verfassungsgeschichte, dass das Begnadigungsrecht dem Träger der höchsten Gewalt zusteht, von dem auch die Jurisdiktion des Gerichtes abgeleitet ist. Das anzuwendende Recht war internationales Recht, ergänzt durch die Vereinbarung der vier Besatzungsmächte. Rechtsgarantien einer nationalen Staatsverfassung waren für die Durchführung des Verfahrens nicht gegeben.

Ad 2.

Die jetzt in Nürnberg tagenden Militärgerichte bezeichnen sich zum Teil selbst in ihren Urteilen und Beschlüssen als amerikanische Gerichte. So wird z.B. in dem Urteil gegen Generalfeldmarschall Milch (S.13 der deutschen Ausgabe) gesagt: "Man sollte niemals vergessen, dass hier ein amerikanisches Gericht Recht spricht." Die einschränkende Auslegung, die die Anklagebehörde diesem Ausspruch gibt, trifft höchstens in dem Sinne zu, dass die Militärgerichte natürlich nicht bloss amerikanisches Recht anzuwenden haben, wie dies das Juristenurteil zutreffend feststellt, sondern wegen ihrer internationalen Aufgabe in erster Linie Völkerrecht. Aber Gnadeninstanz ist der amerikanische Militärgouverneur. Die Garantie der amerikanischen Verfassung finden in gewissen Grenzen Anwendung.

Ad 3.

Wenn in den einzelnen Besatzungszonen die Militärbefehlshaber von der ihnen verliehenen Befugnis Gebrauch machen,

Kriegsverbrechen vor deutsche Gerichte zu bringen, sind die Prozessnormen dem deutschen Prozessrecht zu entnehmen, das die verfassungsmässigen Garantien der jeweiligen deutschen und nicht der amerikanischen Verfassung gewährt.

B. Angriffskrieg.

Der Einwand des rückwirkenden Strafgesetzes.

§ 11. Bindet das IMT-Urteil das Militärgericht? - Nachdem der amerikanische Charakter der Nürnberger Gerichte festgestellt ist, gilt es, auf die materiellen Grundlagen der zu fallenden Entscheidung einzugehen. Nach Artikel 10 der Ordinance No 7 ist die Entscheidung des Internationalen Militärgerichtes für alle nachfolgenden Gerichte bindend, soweit es sich um Invasionen, Angriffshandlungen, Angriffskriege, Verbrechen, Grausamkeiten oder unmenschliche Handlungen handelt. Die Vorschrift ist dahin zu verstehen, dass sowohl die tatsächlichen Feststellungen über das Vorliegen solcher Handlungen als auch ihre Wertung als strafbare Verbrechen an der bindenden Wirkung teilnehmen.

Andererseits ist die internationale Kritik des Nürnberger Urteils schon zu sehr beachtlichen Feststellungen gelangt und es fragt sich, ob die amerikanischen Militärgerichte befugt und verpflichtet sind, die ausserordentlich schweren Bedenken, die sich gegen die Begründung des IMT-Urteils erhoben, zu berücksichtigen.

§ 12. Keine Bindung, da nunmehr kein internationales, sondern ein amerikanisches Gericht. - Um das Ergebnis vorwegzunehmen, so vertritt die Verteidigung den Standpunkt, dass die amerikanischen Gerichte verpflichtet sind, schon aus Rechtsgründen

mindestens in den Wirtschaftsprozessen die Angeklagten freisprechen, weil die Begründung für das IMT-Urteil allein das Londoner Abkommen bildet und dieses als Bill of attainder, d.h. als ein nachträgliches Gesetz zur Bestrafung abgeschlossener Tatbestände und als ex post facto law im Sinne des amerikanischen Rechts bezeichnet werden muss, infolgedessen ein amerikanisches Gericht nicht zur Verhängung einer Strafe ermächtigt. Diese Begriffe des amerikanischen Verfassungsrechts spielten im IMT-Urteil infolge des internationalen Charakters dieses Gerichtes keine Rolle, so dass insoweit wegen der veränderten Fragestellung auch kein ~~precedent~~ vorliegt. Wenn Art. 10 der Ordinance No 7 dem amerikanischen Militärgericht verbieten wollte, das IMT-Urteil, ohne es sich seine Ergebnisse zu eigen macht, unter dem Gesichtspunkt der Wahrung der verfassungsmässigen Rechte zu überprüfen, wäre diese Vorschrift selber wegen Verletzung der amerikanischen Verfassung nichtig. Die Begründung für diese These setzt eine Auseinandersetzung mit den Gründen des IMT-Urteils voraus, wobei sich die Verteidigung weitgehend den Darlegungen anschliesst, die der Professor des Staats- und Völkerrechtes an der Universität California, Hans Kelsen im Sommer 1947 in "The International Law Quarterly" unter dem Titel "Will the Judgment in the Nuremberg Trial constitute a precedent in international law?" (Vol. I No 2) veröffentlichte.

§ 13. Keine Bindung, da anderer Sachverhalt: Angeklagte sind Privatleute, nicht Staats- oder Parteiführer, die früher selbst den Grundsatz "nulla poena sine lege" verletzt haben. - Aber auch, wenn es sich um ein internationales Gericht handelt, behält der Einwand seine Durchschlagskraft, denn es darf nicht übersehen werden, dass nach den Grundsätzen, die der Bindung an Präjudizien immanent sind, die Bindung immer dann

entfällt, wenn der Sachverhalt, der im Prajudiz zur Entscheidung stand, sich von dem nun zu beurteilenden Tatbestand in wesentlichen Punkten unterscheidet. Das ist hier der Fall. Handelte es sich bei dem Prozess des IMT-Urteils um Staatsführer oder sonstige politische Persönlichkeiten in leitenden Stellungen, so geht es diesmal um die Bestrafung von Privatpersonen. Dieser Unterschied ist nicht von untergeordneter Bedeutung, gerade im Zusammenhang mit dem Verbot rückwirkender Strafgesetze. Auch J a c k s o n vortrat grundsätzlich die Geltung des Satzes "nulla poena sine lege", fügte jedoch hinzu:

"Aber diese Männer können nicht beanspruchen, dass solch ein Grundsatz, der in manchem Rechtssystem Gesetze mit rückwirkender Kraft verbietet, auch für sie wirksam sein müsse. Sie können nicht beweisen, dass sie sich jemals in irgend einer Lage auf das Völkerrecht gestützt oder in geringsten darum gekümmert hätten.")

Auch der französische Ankläger François de Monthon hat in seiner Anklagerede vom 17. Januar 1946 in verwandtem Sinne ausgeführt:

"Hat nicht die juristische Lehre des Nationalsozialismus zugegeben, dass in internen Strafrecht selbst der Richter das Gesetz vervollständigen darf? Das geschriebene Gesetz stellt nicht länger die magna charta für die Missetäter dar. Der Richter durfte strafen, falls beim Fehlen einer Strafvorschrift das nationalsozialistische Rechtsgefühl schwer verletzt worden wäre."

Nach einem längeren Zitat aus einer Rede des damaligen Juristenführers Frank auf dem deutschen Juristentag von 1936 fährt er dann fort:

"Es würde dem Angeklagten Frank und seinen Komplizen übel anstehen, wollten sie demgegenüber das Fehlen besonderer geschriebener Strafvorschriften beanfechten." (S.7)

Auch Kelsen verwendet dasselbe Argument, wenn er schreibt:

".... the infliction of an evil which, if not carried out as a reaction against a wrong, is a wrong itself. The non-application of the rule against ex post facto laws is a just sanction inflicted upon those who have violated this rule and hence have forfeited the privilege to be protected by it." (aus "The rule against ex post facto laws and the prosecution of the Axis war criminals", in "The Judge Advocate Journal", Vol. II, p. 46 - Fall-Winter 1945 -)

Das zeigt, dass bei der Bestrafung der angeklagten Nazi-Führer ein Vergeltungsgedanke mit zur Zurückweisung des Einwandes nulla poena sine lege geführt hat, ein Vergeltungsgedanke, der bei den angeklagten Kaufleuten und Industriellen entfallen muss. Nun gilt es aber bei der Tragweite von Rechtsätzen, die sich in Präjudizien finden, die erforderlichen Distinktionen herauszuarbeiten, und diese Distinktionen müssen hier zur Unanwendbarkeit des Präjudizes führen, da den Angeklagten dieses Prozesses die Verletzung des Satzes nulla poena sine lege nicht wie den Angeklagten des ersten Prozesses zur Last gelegt werden kann.

Auch bei den Vorarbeiten im Schoss der amerikanischen Regierungsgestalten, die den Londoner Beschlüssen vorausgingen, sind Gesichtspunkte hervorgetreten, die in die gleiche Richtung weisen. Murray C. Bernays¹⁾, der als Oberst und Chief of the ^{special} projects branch of GI General Staff an den massgebenden Beschlüssen der War und State Departments über die Verfolgung der Hauptkriegsverbrecher teilgenommen hat, schreibt:

"Alle Zweifel und Fragen, die in der öffentlichen Diskussion über die Strafverfolgung aufgeworfen sind und darüber hinaus noch viele mehr, wurden im Kriegs- und Ausserministerium und

1) "Survey Graphic", Januar 1946, S. 7 ff.

von anderen Stellen in Washington eingehend geprüft, bevor der Plan schliesslich gebilligt wurde. Der Schreiber kann dies aus persönlicher Kenntnis sowohl der anfänglichen Einführung des Plans wie seiner schrittweisen Durchsicht als Chef der Abteilung für Sonderaufgaben im Generalstab bezeugen. Es gab Stimmen, die für die Bestrafung der Nazi-Führer durch blosses Dekret der alliierten Regierungen eintraten. Sie stellten die Notwendigkeit jedes Gerichtsverfahrens oder die Weisheit eines solchen in Frage. Andere warfen die Grundauffassung des Plans, darunter die Lehre, dass der Angriffskrieg ein Verbrechen sei. Es ist ein Beitrag zur Vitalität demokratischer Traditionen, dass, bevor über den eingeschlagenen Weg Einigkeit erzielt wurde, die amerikanische Regierung darüber zufriedengestellt worden musste, dass wir wirklich recht tun würden, that we should truly doing justice, selbst in Falle eines so brutalen Feindes und selbst Provokationen gegenüber, deren obsessive Grausamkeit selten ihresgleichen gefunden hat."

Bornays behandelt expressis verbis auch den Einwand der ex post facto law und sagt dazu nichts anderes, als dass Hitler u.a. auch die Vereinigten Staaten angreifen wollte und ausweislich eines übrigens angefochtenen Dokumentes in einer Rede 1939 vor seinen "Mitverschwörern" erklärt habe:

"Ich fürchte nur eines, und das ist, dass Chamberlain oder so ein anderes schmutziges Schwein mit einem Vorschlag einer Sinnesänderung kommt. Er wird hinausgeworfen werden und wenn ich selbst ihn vor allen Photographen in den Bauch treten müsste. Die Invasion und Auslöschung Polens beginnt am Samstagmorgen..."

In oben dem vorerwähnten Dokument wird mitgeteilt, dass die Ansprache mit Enthusiasmus aufgenommen worden und dass Göring auf den Tisch gesprungen sei und getanzt habe. Angesichts der Vorwerfenheit der deutschen Führerelique will Bornays seine

Leser von der Sinnlosigkeit jedes rechtlichen Einwandes gegen ihre Bestrafung überzeugen.

Selbst, wenn man sich diesen Standpunkt zu eigen machen könnte, bleibt die Frage: Was haben mit diesen Gesinnungen der obersten Nazi-Regierungselite die angeklagten Kaufleute und Industriellen zu tun, von denen keiner an den nach dem IMT-Urteil kritischen Führerbesprechungen teilgenommen hat? Sie haben Anspruch auf das volle Recht.

§ 14. Der Zustand des Völkerrechts bei Ausbruch des zweiten Weltkrieges. Kritik des IMT-Urteils. - Die Verteidigung wünscht nicht missverstanden zu werden: Es kann keinen Zweifel unterliegen, dass alles geschehen muss, um Angriffskriege für die Zukunft zu verhindern. Das wichtigste wäre die Schaffung einer internationalen Organisation, die kraft ihrer Autorität in der Lage wäre, mit ausschliesslich friedlichen Mitteln den Austrag aller internationalen Streitigkeiten zu erzwingen. Dabei würden neue Strafnormen eine bedeutende Rolle zu spielen haben. Die Menschheit hat zu sehr unter dem Krieg gelitten, um sich nicht im Innersten nach einem ewigen Frieden zu sehnen. Aber es muss festgestellt werden, dass ein solcher Rechtszustand, bei dem die Souveränität der Regierungen durch das Bestehen von Strafnormen für den Fall des Angriffskrieges eingeschränkt gewesen wäre, beim Ausbruch des zweiten Weltkrieges noch nicht erreicht war.

Zunächst wird nicht recht klar, welchen Standpunkt das Gericht zu dem Satz "nulla poena sine lege" einnimmt. Es wird zuerst festgestellt, dass dieser Grundsatz ein Postulat der Gerechtigkeit sei, in gleichen Atem aber gesagt, dass er der Souveränität der Staaten keine Schranken auferlege, andererseits wird davon wenigstens so viel festgehalten, dass zur Zeit der

Begehung der Handlungen bereits ein Verbrechen im Rechtssinne vorgelogen haben muss und alle Energie wird darauf verwandt, zu bologon, dass das Bewusstsein der Strafwürdigkeit schon seit Jahrzehnten gegeben war.

Diese Stellungnahme ist an sich schon eine Halbwahrheit. Gibt es Verbrechen, für die keine Strafe vorgesehen ist? Das DMT-Urteil antwortet: Gerade im Völkerrecht habe es schon immer loges imperfectas gegeben, die ohne ausdrückliche Strafandrohung die Grundlage zu Strafverfahren gebildet hätten, wie die Ahndung der Verstösse gegen die Haager Landkriegsordnung schon immer bewiesen. Aber dieser Vergleich hinkt, denn die Verstösse gegen das Kriegesrecht sind in der Tat gewohnheitsrechtlich schon immer bestraft worden, sie galten auch dann als Verbrechen, wenn ein Land die Haager Landkriegsordnung nicht ratifiziert hat, hier handelt es sich um echtes Gewohnheitsrecht, zu dessen Voraussetzungen eine nachgewiesene Übung und die opinio necessitatis gehören. Man sieht, es gibt kein Verbrechen ohne Strafe und schon das legt den Schluss nahe, dass auch die out-lawry des Krieges durch den Kellogg-Pakt den Krieg nicht zu einem Verbrechen im Rechtssinn stampelt, weil von einer Bestrafung der Regierungen nicht die Rede ist und als einzige Sanktion der Verlust der Rechte aus dem Kellogg-Pakt für die vortragebrüchige Regierung vorgesehen ist.

§ 15. Der Fall des deutschen Kaisers. - Zum Fall des deutschen Kaisers, auf den das DMT-Urteil Bezug nimmt, weist Kolson mit Recht darauf hin, dass abgesehen von Art. 227 des Versailler Vertrages die Strafbarkeit des deutschen Monarchen jeder Rechtsgrundlage entbehrt habe:

"When the victors in the first World War intended to bring William II to trial - not for a crime against peace - but "for a supreme offence against international morality and the sanctity of treaties", they thought it is necessary to insert

the provisions establishing, with retroactive force, his responsibility as organ of the German Reich into the peace treaty signed and ratified by this State."

Deshalb haben auch die U.S.A. in der 1919 eingerichteten Kommission die Unmöglichkeit einer rechtlichen Begründung der Anklage gegen den deutschen Kaiser geltend gemacht (vgl. J. Brown Scott: House-Seeymour, "What really happened at Paris", London 1921, S. 237, 239).

Demgemäss hat auch die niederländische Regierung in ihrer das Auslieferungsverlangen der Alliierten zurückweisenden Note vom 21. Januar 1920 erklärt, dass sie keine rechtlichen Verpflichtungen anerkennen könne, sich einem Akt der hohen internationalen Politik der Mächte anzuschliessen:

"Wenn in der Zukunft durch den Völkerbund eine internationale Rechtsprechung geschaffen werden sollte, die befugt wäre, im Falle eines Krieges über Tatsachen Recht zu sprechen, die durch ein vorher ausgearbeitetes Statut zu Verbrechen gestempelt und als solches sanktioniert sind, dann werden die Niederlande sich der neuen Ordnung der Dinge anschliessen."

D.h. die niederländische Regierung sah in Art. 227 des Versailler Vertrages ein rückwirkendes Strafgesetz und daher keine rechtlich haltbare Grundlage für das Auslieferungsverlangen der Alliierten.

§ 25. Die Bezeichnung des Krieges als Verbrechen. - In der Tat war es die herrschende Meinung des Völkerrechts, die mit der Achtung vor der Souveränität der Regierungen zusammenhängt, dass die Führung eines Krieges kein an den Mitgliedern der Regierung strafbares Verbrechen im Rechtssinne sei. Kelsen (a.a.O.) weist darauf hin, dass die Bezeichnung des Krieges als Verbrechen bei dem Stande des Völkerrechts in der Zeit, in der diese Wendungen

gebraucht wurden, keineswegs eine Strafbarkeit der Regierungen bedeutet hat.

"An illegal war may be called an "international crime", and has been so called in the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, and in a Resolution of the Eighth Assembly of the League of Nations (but not in the Briand-Kellogg-Pact). This term, however, does not mean - as the International Military Tribunal erroneously declares in its judgement - "that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing."

Ausserordentlich aufschlussreich ist in diesem Zusammenhang der Kommissionsbericht des polnischen Delegierten Sokal zur Genfer Resolution von 1927, die bekanntlich nicht ratifiziert, jedoch vom IMT-Urteil als Beweis für die Rechtsüberzeugung von der Strafbarkeit des Angriffskrieges herangezogen worden ist. Diese Resolution enthält die Bezeichnung des Krieges als Verbrechen. Sokal führt dazu aus:

"Tout en étant d'accord pour estimer que le projet de résolution ne constitue pas un instrument juridique proprement dit, augmentant de façon concrète la sécurité et se suffisant à lui-même, la troisième Commission a été unanime à en apprécier la grande portée morale et éducative."

Und Professor Max Radin von der Universität Kalifornien, schreibt in "Justice in Nuremberg", Foreign Affairs, April 1946, S. 381:

"The word "international crime" used about an aggressive war in the Geneva Protocol of 1924 cannot be rated higher now than it was rated then, as a rhetorical term - a noble rhetoric, to be sure - but not a term with definite legal content."

§ 17. Die Outlawry des Krieges im Kellogg-Pakt ohne strafrechtliche Bedeutung. - Wenn aber schon die Bezeichnung des Krieges als Verbrechen nur moralischen und orsichorischen Wort hat, kann die im Ausdruck mildere Outlawry des Kellogg-Paktes nicht eine Strafbarkeit der Regierungen begründen. Es war die Absicht der Väter des Kellogg-Paktes, den Angreifer gewissen moralischen Sanktionen auszusetzen, ihn der moralischen Verurteilung durch die öffentliche Meinung der Welt preiszugeben. In "Münchberg als Rechtsfrage", Klett-Verlag Stuttgart (S.42) schreibt mein Kollege Wilhelm G r e w e , Professor des Staats- und Völkerrechts an der Universität Freiburg:

"Zweifelhaft und aus einer sinngetreuen Interpretation des Vertrages nicht mehr ableitbar ist es bereits, wenn man in den dreissiger Jahren und im Verlaufe des letzten Krieges hier und dort versuchte, aus dem Kellogg-Pakt eine partielle Suspension des Kriegs- und Neutralitätsrechtes gegenüber dem paktbrüchigen Staate zu rechtfertigen. Wenn aber Sir Hartley Shawcross und mit ihm seine Kollegen und der Gerichtshof darüber hinaus aus dem Wortlaut und System des Kellogg-Paktes eine unmittelbare völkerstrafrechtliche Verantwortlichkeit (wenn diese Wortbildung erlaubt ist) der für den Paktbruch verantwortlichen Einzelpersonen herleiten wollen, so scheint mir dieses Unternehmen juristisch vollends unhaltbar zu sein."

Die Gründe, die dem entgegenstehen, sind die folgenden:

In der Tat hat bei der Unterzeichnung des Kellogg-Paktes im Jahre 1928 keine der beteiligten Regierungen an eine individuelle strafrechtliche Verantwortlichkeit gedacht. Das ergibt sich unzweideutig aus einer Erklärung des Staatssekretärs Kellogg vor dem Auswärtigen Ausschuss des Senats der USA am 7. Dezember 1928:

"Wie man annehmen kann, dass für die Vereinigten Staaten eine moralische Verpflichtung bestünde, nach Europa zu gehen, um den Angreifer oder die Kriegspartei zu bestrafen, wo doch im Laufe der Verhandlungen niemals ein solcher Vorschlag gemacht wurde und niemand dem zustimmte und wo eine solche Verpflichtung auch gar nicht besteht - das geht über meinen Verstand. Ich kann es nicht begreifen.

Soweit ich sehe, sind wir nicht stärker verpflichtet, jemanden wegen Verletzung des Antikriegspaktes zu bestrafen, als wir ihn wegen Verletzung irgend eines anderen mit uns geschlossenen Vertrages zu bestrafen verpflichtet sind."

Wilhelm Growe¹⁾ sagt dazu mit Recht:

"Wird dabei etwa das Recht zu strafen vorausgesetzt? Im Gegenteil! Schon aus rechtslogischen Gründen ist klar, dass damit auch jedes Strafbefugnis verneint werden sollte: Denn wann hätte je im Völkerrecht eine Vertragsverletzung des einen Partners dem andern eine Befugnis zu Strafmaßnahmen gegeben? Rücktritt, Wiedergutmachung, allenfalls Repressalien - das sind die Rechtsfolgen, die in Falle einer Vertragsverletzung eingreifen können - , von einer "Bestrafung" des vertragsbrüchigen Staates oder gar der für den Vertragsbruch verantwortlichen Einzelperson ist niemals die Rede gewesen. Und stillschweigend lässt sich in dieser fundamentalen Frage das Völkerrecht ja wohl nicht von einem Tag auf den anderen ändern."

Der Auswärtige Ausschuss des Senats der USA berichtete am 15. Januar 1929 dem Plenum wie folgt:

"Der Ausschuss ist der Ansicht, dass der Vertrag keine Sanktionen vorsieht, weder ausdrücklich noch stillschweigend. Sollte irgend ein Signatar des Vertrages oder irgend ein später beigetretenen

1) a.a.O. S. 105 ff.

Staat die Bestimmungen desselben verletzen, so besteht auf seiten der anderen Unterzeichner weder ausdrücklich noch stillschweigend irgend eine Verpflichtung oder Verbindlichkeit, Straf- oder Zwangsmassnahmen gegen den Vertragsbrüchigen Staat zu ergreifen. Die Wirkung der Vertragsverletzung besteht darin, die anderen Unterzeichner des Vertrages von jeder Verpflichtung aus dem Vertrage dem verletzenden Staate gegenüber zu befreien."

Noch am 8. August 1932 erklärte Staatssekretär S t i m -
s o n vor dem Council on Foreign Relations in New York:

"Der Briand-Kellogg-Pakt sieht keine zwangsmässigen Sanktionen vor. Er fordert nicht, dass irgend ein Signatar mit Zwangsmassnahmen vorgeht, falls der Pakt verletzt wird. Er beruht vielmehr auf der Sanktion der öffentlichen Meinung, die zu einer der mächtigsten Sanktionen der Welt gemacht werden kann."

Moralische Sanktionen gegen den Vertragsbrüchigen Staat, nicht aber individuelle Strafbarkeit der verantwortlichen Personen waren somit nach den Vorstellungen der Signatäre des Kellogg-Paktes die Folgen einer Vertragsverletzung.

§ 18. Die Haltung der Mächte bei früheren Verletzungen des Kellogg-Paktes. - R a d i n schreibt in "Foreign Affairs" (April 1946, S. 381):

"If the violation of the Kellogg-Briand-Pact or of the Geneva Protocol constitutes a crime, either for the nation or for the persons instigating it, then the conduct at the time of all the Powers that joined in creating the Tribunal at Nuremberg puts them in the unfortunate light of having acquiesced in what they now denounce as criminal. No official protest was made by these Powers, when acts violating the Pact were committed. The personal indignation of such high-minded men as Mr. Stimson, Secretary of State when Japan invaded Manchuria, was shared, so far as our records go, neither by the President nor the Congress. And if it

was shared by the majority of the people, there is abundant reason to hold that at that time no substantial number of Americans would have approved of war on Japan because of it. Did the United States, did Great Britain, France and Russia become accessories after the fact in these crimes when they declined to treat them as crimes and continued close relations both with the nations that had committed them and the persons who had instigated them? It is hard to understand why that conclusion does not follow."

Auch F i n c h aussert sich in seiner Zeitschrift "The American Journal of International Law", 1947, S. 26, in einem Artikel über "The Nuremberg Trial and International Law" in verwandtem Sinne:

"Moreover, the Tribunal failed to take into consideration or give due weight to the attitudes of the prosecuting governments toward the same events at the time they took place. For example, the prompt recognition of the annexation of Austria by Germany, and the failure of the League of Nations to act upon a protest filed by the Mexican Government demanding that the obligations of the Covenant be enforced at that time, would seem to negative the holding by the Nuremberg Tribunal that the planning and consummation of the annexation was part of an international crime."

Die Beispiele lassen sich vermehren: Zu erwähnen sind noch der Chakokrieg 1934, die Eroberung Abessinians durch Italien 1935/36, der chinesisch-japanische Konflikt 1937, endlich der finnisch-russische Krieg 1939/40. In seinen grossen Rechtsplaidoyer vor dem DMT hat mein Kollege J a h r r e i s von der Universität Köln mit Recht hervorheben können, dass das gesamte System der kollektiven Sicherheit (ges. zusammengebrochen war, weil in allen diesen Fällen jeder Hinweis auf eine etwaige Strafbarkeit der Angreiferregierungen unterblieb, ja selbst alsbald diplomatische

Verhandlungen aufgenommen wurden, die in vielen Fällen zu einer Anerkennung der Annexionen geführt haben.

§ 19. Zusammenfassung. - Nach allem ist Professor Radin zuzustimmen, wenn er a.a.O. feststellt:

"I do not think that in the many discussions of the matter by Mr. Jackson and others the challenge has been met." (S. 25) und Professor Kelsen hat Recht, wenn er als einzige Grundlage des IMT-Urteils das Londoner Abkommen, also "spezielles Völkerrecht" anerkennt und es ablehnt, dem IMT-Urteil die Bedeutung eines echten precedent im Sinne des allgemeinen Völkerrechts einzuräumen. Zum gleichen Schluss kommt Finch in seiner vorerwähnten Abhandlung.

Endlich sei auf den Harvard-Professor M a n l e y O. H u d s o n besorgte Mahnung hingewiesen, die Integrität völkerrechtlicher Vortragsinstrumente vor Verfälschungen ihres Sinngehalts zu bewahren. Er schreibt unter der Überschrift "Integrity of International Instruments" in "the Annals of International Law", Januar 1948 (Vol. 42, Heft 1, Seite 105): "It is difficult to conceive of the possibility of making substantial progress in the development of international law unless a scrupulous respect obtains for the integrity of international instruments. Yet a tendency now seems to prevail in some quarters to undermine that respect by torturing the meaning of great international instruments and by forcing them to serve purposes for which they were never designed, purposes at variance with the desires entertained by Governments when the instruments were brought into force.

Evidence of this tendency was supplied by the International Military Tribunal at Nuremberg when it gave a spurious application to provisions of the Paris Treaty for the renunciation of war as instrument of national policy."

§ 20. Widerlegung der Rechtfertigung des DMT-Urteils aus der besonderen Natur des Case Law. - Es kann sich daher nur darum handeln, den mehrfach versuchten Nachweis zu widerlegen, dass trotz des offenen Bruches mit der völkerrechtlichen Tradition kein Vorstoß gegen den Grundsatz nulla poena sine lege vorliege.

Dass bis zum DMT-Urteil eine Strafsanktion für den Angriffskrieg nicht bestanden hat, gaben auch diejenigen zu, die das Urteil als Rechtsfortschritt begrüßten und es gerade für das Charakteristische der allmählichen Entwicklung des case law halten, dass unmerklich neue Rechtsgedanken in der Rechtsprechung sich durchsetzen, ohne dass man von einem Bruch mit der Vergangenheit sprechen könne. Diese Betrachtungsweise mag vom Standpunkt des Historikers allenfalls vertretbar sein, vom Standpunkt des Richters ist sie eine Ungeheuerlichkeit. Es ist zwar richtig, dass case law in Laufe der Entwicklung durch allmähliche Preisgabe alter Rechtsvorstellungen oder allmähliche Einführung neuer Rechtsgedanken sich den jeweiligen sozialen und sittlichen Wandlungen angepasst hat, aber wenn irgend ein Schritt in der Rechtsentwicklung eine ganz klare Stellungnahme erfordert, ob der Richter sich hier an Ueberkommenes hält, wozu er verpflichtet ist, oder ob er neues Recht schafft, was grundsätzlich dem Gesetzgeber überlassen werden muss, dann ist es die Einführung der Todesstrafe für ein Verhalten, für das zur Zeit der fraglichen Handlung von einer Strafsanktion keine Rede war. Hier mit der Parallele jener Fälle extensiver oder restriktiver Interpretation eines alten Rechtssatzes zu arbeiten, ist zum mindesten ein erstaunlicher Mangel an Augenmass, bei dem politische Erwägungen mehr als richterliche Objektivität die Feder führen. Was hätte das Verbot der ex post facto law noch für einen Sinn, wenn es in so extremen Fällen mit solchen Erwägungen ausgetarnt werden könnte? Jedenfalls ist gerade in der

amerikanischen Verfassung der Grundsatz *nulla poena sine lege* zuerst formuliert worden, obwohl die Masse des amerikanischen Rechtes *case law* ist.

Wenn mit den neuen Erkenntnissen der rechtssoziologischen Schule etwa des ehrwürdigen Roscoe Pound unter Verken-
nung der methodischen Unterschiede in diesem Sinne dogmatische
Losungen begründet werden sollen, ist man nicht weit entfernt
von jener gefährlichen Haltung, die die rechtspolitischen Forde-
rungen dem geltenden Rechte gleichsetzt. Kelsen schreibt mit
Recht:

"That the London agreement is only the expression, not the
creation of this new law is the typical fiction of the
problematic doctrine whose purpose is to veil the arbitrary
character of the acts of a sovereign law maker."

§ 21. Kein Durchbruch der neuen Prinzipien im allgemeinen
Völkerrecht. - Auch trifft die Verstellung gar nicht zu, dass
sich mit dem IMT-Urteil wirklich ein Durchbruch zur allgemeinen
Strafbarkeit des Angriffskrieges vollzogen hätte. Je weiter sich
die rechtliche und politische Entwicklung von den Kriegsende
entfernt, umso mehr gewinnt das Vorgehen gegen die deutschen
Kriegsverbrecher den Charakter einer Ausnahmehandlung, die im
übrigen die überkommene Straflosigkeit der Völkerrechtsbrüche
unberührt lässt. Zwar hat die Anklagebehörde in ihrem Trial-
Brief mit Recht behauptet, dass die Kodifikation des neuen
Völkerrechts in Schosse der Vereinten Nationen im Sinne der
Nürnberger Grundsätze geplant sei. Wenn man jedoch näher zusieht,
so ist man von der Verwirklichung dieser Pläne weit entfernt.
Jedenfalls hat das Committee on the Progressive Development of
International Law, nachdem es ein halbes Jahr mit der Aufgabe
befasst war, die Grundsätze des IMT-Urteils zu kodifizieren, be-
schlossen, die Formulierung der Nürnberger Prinzipien nicht

zu unternehmen, weil dies offenbar eine Aufgabe sei, die sorgfältige und eingehende Studien erfordere. Das Committee schloss mit einer Resolution, dass es nicht berufen sei, den sachlichen Inhalt der Nürnberger Grundsätze zu erörtern und dass eine solche Erörterung besser der International Law Commission anzuvertrauen wäre. Ferner ist hervorzuheben, dass die Vertreter Ägyptens, Polens, Englands, der Sowjet-Union und Jugoslawiens einen Mehrheitsbeschluss desselben Committees ablehnten, welcher eine Empfehlung aussprach, dass die Durchführung der Prinzipien des Nürnberger Verfahrens und seines Urteils es wünschenswert erscheinen lasse, eine internationale Gerichtsautorität zu schaffen, die über solche Verbrechen Juridiktion ausüben könnte¹⁾.

Deshalb ist es offenbar auch falsch, mit Schick und Kelsen sich darauf zu berufen, dass Russlands internes Strafgesetzbuch ebenfalls eine rückwirkende Strafnorm kenne und insoweit den Grundsatz nulla poena sine lege ebenfalls durchbroche. Denn diese Strafnorm richtet sich gegen die counterrevolutionäre Verfolgung und Unterdrückung der Zwischenzeit und Bürgerkriegswirren, ist also nach dem vollen Sieg der kommunistischen Revolution erlassen worden. Hier aber lässt sich bei dem im Sommer 1948 erreichten Stande der Entwicklung die Feststellung kaum umgehen, dass in diesem Verfahren auf Kosten der Angeklagten bloss so getan wird, als ob ein tiefgreifender Wandel des gesamten Völkerrechtssystems sich vollzogen hätte, während in Wahrheit die neuen Ideen, selbst im Schosse der Uno, noch jetzt auf starken Widerstand stossen und von ihrer Verwirklichung im allgemeinen Völkerrecht noch weit entfernt sind. Selbstverständlich soll diese Feststellung nicht die bona fides der Initiatoren der Nürnberger Verfahren in Zweifel ziehen; gerade Jackson hat

1) vgl. Schick "Crimes against Peace" in "Journal of Criminal Law and Criminology" Vol. 38 (Januar/Februar 1948), S. 464 ff.

mit grösstem Nachdruck gefordert, dass auch die Sieger, die neuen Grundsätze auf sich zur Anwendung bringen müssten. Aber warum hat der neue Haager Weltgerichtshof der VN in alten Stile bloss die Kompetenz für Streitigkeiten zwischen Staaten erhalten, ohne den in Nürnberg praktisierten neuen Gedanken der völkerstrafrechtlichen Verantwortlichkeit des einzelnen auch nur in geringster Beachtung zu tragen? Den Internationalen Strafgerichtshof gibt es jedenfalls bis jetzt noch nicht und wird es auch in naher Zukunft nicht geben, denn bekanntlich bedeutet die blosse Empfehlung eines Beschlussorgans in Völkerbund und in der Uno das öffentliche Eingeständnis grossen Widerstandes gegen die Realisierung der empfohlenen Neuerung, wahrlich kein Wunder, wenn sowohl die Sowjet-Union als England zu den Gegnern zählen.

Diese Entwicklung stempelt in gewissem Sinne die Nürnberger Gerichte geradezu zu Ausnahmegerichten, für die ex post facto ein Ausnahmerecht geschaffen worden ist. Das ist der wundere Punkt, der die ungewöhnlich scharfe Verurteilung der Nürnberger Prozesse im angelsächsischen Lager erklärt, wie sie etwa durch Felix Morley, Präsident des Haverford College repräsentiert wird, der von Justistravestie spricht und ein Lynchen für ehrenhafter und rechtlicher gehalten hätte. Radin schreibt in "Foreign Affairs", 1946, S. 373:

"Others are humanitarians and pacifists to whom every form of bloodshed whether in war or by capital punishment is equally objectionable. They are represented by President Felix Morley, of Haverford College, who in "Human Events" of December 21, 1945, speaks of the entire proceedings as a "travesty of justice." Something very much like that is the position of Professor Milton R. Konvitz, as expressed in the January 1946 edition of "Commentary". And in one form or another it underlies the objections presented by Professor Sidney Hook and

others who have discussed the matter in the New York "Nation". It is curious that this point of view is often associated with a qualified approval of lynching. Mr. Morley declares that lynching would be "more honest and forthright" and specifically states in the publication cited: "There could have been little or no objection if these men had been shot by military firing squads when captured." Professor Joad of Cambridge and other Englishmen of high standing have similarly declared that lynching of the Nazi leaders would be preferable to a formal trial."

Auch sei hier der italienische Rechtsgelahrte V e d o -
v a t o , Professor des Völkerrechts an der Universität Florenz,
zitiert, der seine Untersuchung über das Nürnberger Urteil mit
folgender Bemerkung schliesst (Diritto internazionale Bollino,
Firenze 1946, S.293):

centro

"La soluzione sul piano internazionale della giustizia/i ori-
ninali di guerra ha le caratteristiche di una repressione
politica, ed intanto si può attuare in quanto ne esistano le
condizioni politiche obiettive: la vittoria da una parte o
la sconfitta dall'altra. Il processo disposto dall'accordo
quadripartito di Londra, più che un atto giuridico, rappresenta
la fine di un combattimento, per il quale sembra più logico o
certamente più rispondente ad una elementare sensibilità
giuridica, ripetere quanto Robespierre diceva di Luigi XVI:
"Il n'était pas un accusé, mais un ennemi; il n'y avait pas de
procès à faire, mais une mesure de salut public à prendre."

§ 22. Widerlegung der Rechtfertigung des IRT-Urteils aus
der besonderen Natur des Völkerrechts. - Professor W o o h s o -
l o r von der Columbia-Universität ("Political Science Quarter-
ly", Jahrg.62, März 1947, S.23) versucht der Schwierigkeit da-
durch Herr zu werden, dass er die unbewiesene und unbeweisbare

These aufstellt, der Satz nulla poena sine lege sei eine Klammer des innerstaatlichen Rechts und wesensmäßig den Völkerstrafrecht fremd. Jedoch hat das IMT-Urteil selbst den Nachweis versucht, dass seine Entscheidung den Satz nulla poena sine lege nicht verletze.

Auch die niederländische Regierung stand, als sie die Auslieferung des Kaisers verweigerte - ohne damals irgend einen Widerspruch hervorzurufen - offenbar auf dem entgegengesetzten Standpunkt, und wenn das Völkerrecht aus den anerkannten Rechtsgrundsätzen der zivilisierten Nationen zu ergänzen ist, dann beweist die Proklamation des Kontrollrats Nr. 3, dass der Satz, der die rückwirkenden Strafgesetze ausschliesst, zu den grossen rechtsstaatlichen Errungenschaften gehört, deren alle zivilisierten Nationen sich rühmen. Dabei wandte sich diese Proklamation des Kontrollrats gegen eine verhältnismässig milde Durchbrechung des Satzes nulla poena sine lege. Die nationalsozialistische Strafgesetsnovelle hatte nur in beschränktem Umfang die Gesetzesanalogie zugelassen, und das Reichsgericht hat festgestellt, dass die Anwendung der Analogie immer dann entfalle, wenn in der Gesetzgebung eine Handlung absichtlich straffrei gelassen war. Hier aber handelt es sich um eine Revolutionierung des bisherigen Völkerrechtssystems, um eine Preisgabe der Leitgedanken selbst, die mit keiner wie immer gearteten Analogie gerechtfertigt werden kann. Dass in Völkerrecht durch Gesetze, die in Wege des Staatsvertrages vereinbart werden können, für die Zukunft ein neuer Rechtszustand geschaffen werden kann, vernag auch Wechseler nicht zu leugnen, und gerade an einen solchen Rechtsfortschritt hatte die niederländische Regierung gedacht, als sie die Auslieferung des Kaisers mit Rücksicht auf das geltende Recht ablehnte.

Gerade im Völkerrecht besteht die Gefahr, dass die politische Leidenschaft den Missbrauch des Rechts begünstigt, und deshalb

ist der Satz *nulla poena sine lege* auch für dieses Rechtsgebiet unentbehrlich. In einem *aide-mémoire* vom 6. August 1942 - ich verdanke das Zitat Finch a.s.O. Anmerkung 17 - hat die englische Regierung festgestellt:

"In dealing with war criminals whatever the Court it should apply the laws already applicable and no special *ad hoc* law should be enacted."

§ 23. Ergebnis. - Das Ergebnis dieser Feststellungen lässt sich dahin zusammenfassen: Der Strafausspruch des IMT-Urteils wegen Angriffskrieges beruht nicht auf anerkannten Grundsätzen des Völkerrechts, sondern auf der Vereinbarung der Siegerstaaten, an der das Deutsche Reich nicht teilgenommen hat. Diese Vereinbarung hat den Charakter einer Bill of attainder und einer *ex post facto* law und kann deshalb ebenso wenig wie das in Ausführung der Londoner Vereinbarung ergangene Kontrollratsgesetz von einem amerikanischen Gericht angewendet werden. Denn das amerikanische Gericht beugt sich nicht blind jedem Akt der Gesetzgebung, sondern ist verpflichtet und gewöhnt, ihn auf seine Verfassungsmässigkeit zu prüfen.

§ 24. Das Prüfungsrecht des Gerichts gegenüber dem anzuwendenden Gesetz nach amerikanischem Verfassungsrecht. - Während man bei den verfahrensrechtlichen Garantien, die die amerikanische Verfassung vorsieht, etwa bei dem Recht des Angeklagten auf Konfrontation mit den Zeugen, sich auf den Standpunkt stellen mag, dass diese Garantien für eine *military commission* nicht gelten, weil die *military commission* kein Teil des amerikanischen Gerichtssystems ist, für das die Grundsätze der Verfassung in erster Linie bestimmt sind, handelt es sich bei dem Verbot der *ex post facto* law nicht um eine das Justizsystem betreffende Vorschrift, sondern um eine Schranke der Gesetzgebungsgewalt, die ihrem Sinne nach für alle diejenigen Stellen Geltung hat, die in

Namen der Vereinigten Staaten Recht zu setzen vermögen. So ist anerkannt, dass das Verbot der ex post facto law nicht nur für die legislativen Körperschaften der Vereinigten Staaten, sondern auch für die Träger der Verordnungsgewalt gilt.

R o t t s c h ä f e r schreibt in seinem Buch "On Constitutional Law", S. 768: "The apply to every form of legislative actions whether it consists of a statute or municipal ordinance." Nun kann man freilich die Frage stellen, ob ein Hilfsorgan der Militärregierung, und die military commissions sind als solche aufzufassen, befugt ist, die Gesetzgebungsgewalt der militärischen Befehlsstellen auf ihre verfassungsmässigen Grenzen zu überprüfen. Aber dieses Befugnis muss man den military commissions zubilligen. Es ist nicht anzunehmen, dass die Verordnungsgewalt der militärischen Befehlsstellen über diejenigen Gesetzgebungsakte hinausgeht, die der Kongress selbst erlassen könnte. Würde man sich auf einen anderen Standpunkt stellen, so wäre die military commission eine allzu bequeme Einbruchsstelle diktatorischer Willkür. Der Spielraum der Exekutive hat seine inneren Schranken. Die Vorstellung ist unvollziehbar, dass der Präsident nach der amerikanischen Verfassung Strafgesetze erlassen könnte, die das Parlament nicht zu beschliessen in der Lage wäre. Unter diesen Umständen ist auch das Hohe Gericht nicht an die Meinung des I.M.T.-Urteils gebunden, dass die Vorbereitung zum Angriffskrieg sowie die Teilnahme von Privatpersonen an völkerrechtlichen Verstössen ihrer Regierung schon inner strafbare Handlungen gewesen seien. Für amerikanische Besatzungsgerichte sind die Verfassungsgarantien jedenfalls insoweit massgebend, als sie einen "non-technical or non-remedial character" haben. In den Military Government Court Letters vom 10. Januar 1948 wird entsprechend festgestellt:

"There is no longer a need for the necessary disregard of some of the customary procedural safeguards of American law in law

enforcement. It is therefore desired that Military Government Court proceedings in all essential points conform to the traditional procedures of American law which apply whenever the life, liberty or property of an individual are subjected to penal procedure."

Was für die hier massgebenden Verordnungen gilt, gilt auch für das Londoner Agreement. Auch das amerikanische Recht steht auf dem Standpunkt, dass völkerrechtliche Verträge der Ratifikation durch den Kongress bedürfen. Daneben gibt es auch sogenannte Agreements, die der Präsident auf Grund seiner Exekutivgewalt ohne den Kongress beschliessen darf. Man kann aber nicht annehmen, dass diese Agreements der Executive Power einen Inhalt haben können, den der Kongress nicht selber beschliessen könnte. Es wird zwar gelehrt, dass die Nachprüfung der Frage, ob ein Abkommen der Ratifikation bedarf oder nicht, den Gerichten entzogen ist, aber gleichzeitig wird dargelegt, dass auch die Kraft eines ratifizierten Abkommens nicht grösser sein könne als die eines normalen Gesetzes. Das bedeutet aber, dass die Schranken der Legislative auch für internationale Abmachungen gelten, einerlei, ob sie von Präsidenten allein oder mit Zustimmung des Kongresses beschliessen worden sind.

§ 25. Prüfungsrecht des Gerichts gegenüber dem anzuwendenden Gesetz nach Völkerrecht. - Für das IMT als internationales Gericht war die Bindung an die anglo-amerikanische Rechtstradition nicht gegeben. Seine Entscheidung ist deshalb insoweit kein precedent, als die Fragestellungen nunmehr durch den amerikanischen Charakter des Hohen Gerichtes verändert sind. Aber auch das IMT hielt sich für berechtigt, trotzdem es das Londoner Agreement grundsätzlich als Gesetz anerkannte, ihm insoweit die Gefolgschaft zu versagen, als es Verbrechen gegen die Menschlich-

keit auch aus der Vorkriegszeit mit Strafe bedroht¹⁾. Das zeigt, dass auch nach Völkerrecht ein Gericht zu prüfen hat, ob die völkerrechtlichen Grenzen der Legislative eingehalten worden sind und, wie schon erwähnt, ist das Verbot der *ex post facto* law zugleich ein völkerrechtlicher Grundsatz. Ich erinnere an das vorhin zitierte *aide-mémoire* der englischen Regierung aus d.J. 1942 und die Kontrollratsproklamation Nr.3.

W i n t h r o p schreibt über die Vollmachten der Militärregierung auf Seite 601:

"In such cases the laws of war take the place of the constitution and laws of the United States as applied in time of peace"

"This language strong as it may seem asserts a rule of international law recognized as applicable during a state of war."

und auf Seite 773:

"By the term Law of War is intended that Branch of International Law which prescribes the rights and obligations of belligerents.."

Danach ist die military commission an das Völkerrecht gebunden und man darf keinesfalls annehmen, dass der Militärbefehlshaber eines besetzten Landes, der so ausserordentlich viele und wirk-same Möglichkeiten hat, in Wege des unmittelbaren Verwaltungs-zwanges Ruhe und Ordnung in dem besetzten Lande zu gewährleisten, sich über das in allgemeinen Völkerrecht enthaltene Verbot rück-wirkender Strafgesetze hinwegsetzen kann. Der völlige Zusammen-bruch in Deutschland und die bedingungslose Kapitulation haben nicht die völlige Rechtlosigkeit der Deutschen hervorgebracht, in Gegenteil belasten diese Fakten, um den Ausdruck des Nürn-berger Juristenurteils zu gebrauchen, die Alliierten "mit einer kategorischen menschlichen Pflicht weit grösserer Reichweite" als die Haager Landkriegsordnung in einem besetzten Land begrün-den würde (vgl. S.9 des Juristenurteils)..

1) vgl. dazu Finch a.a.O. S.23.

§ 26. Der Kellogg-Pakt schließt nicht die Vorbereitung und Planung des Angriffskrieges, auch nicht die Rüstung als solche. -

Nach den Vorangegangenen kommt es somit auf den Kellogg-Pakt nicht an. Immerhin ist er der eigentlich tragende Grund des IMT-Urteils und deswegen sei für den vorliegenden Prozess noch auf folgende Punkte hingewiesen:

Das Argument Kelsens scheint mir zwingend zu sein, dass der Kriegsmächtepakt höchstens den Krieg als solchen, nicht aber die Planung und Vorbereitung als solche geächtet habe. Die durch das Kontrollratsgesetz Nr. 10 zu selbstständigen Delikten erhobenen Tatbestände "Planung und Vorbereitung des Angriffskrieges" sind somit nicht einmal durch den Kellogg-Pakt gedeckt.

Im übrigen fällt unter die Achtung des Kellogg-Paktes keinesfalls die Rüstung, das hat das IMT-Urteil selbst anerkannt. So heisst es im Abschnitt über Schacht:

"Aber die Aufrüstung an sich ist nach dem Statut nicht verbrecherisch. Wenn sie ein Verbrechen gegen den Frieden darstellen sollte, so müsste gezeigt werden, dass Schacht diese Aufrüstung als Teil des Nazi-Planes zur Durchführung von Angriffskriegen durchführte Der Tatbestand gegen Schacht hängt demnach von der Annahme ab, ob Schacht tatsächlich von den Angriffsplänen wusste¹⁾.

Dem entspricht die Stellungnahme des Präsidenten Coolidge, der am 10. November 1928 unter Hinweis auf die militärischen Leistungen der Vereinigten Staaten im Weltkrieg erklärte, es sei die Pflicht der Vereinigten Staaten gegen sich selbst und es

1) Nach Ansicht des IMT hat übrigens Schacht selbst durch seine erwiesene Teilnahme an der Besetzung Oesterreichs und des Sudetenlandes kein solches Wissen erlangt.

liege im Interesse der Zivilisation, der Ruhe im eigenen Lande, ebenso wie geordneter und legaler Beziehungen zu ausländischen Völkern, eine entsprechende Flotte und Armee zu unterhalten. Eine Politik solcher zusätzlicher Garantien neben dem Kriegsschutzpakt sei notwendig. Die Sache des Friedens werde durch diesen Pakt von der positiven Seite her, durch die militärische Rüstung von der negativen Seite her gefördert. Vom Kellogg-Pakt rühmte Coolidge, er sei das vollkommenste und werde das wirksamste Werkzeug für den Frieden sein, das jemals geschaffen wurde, und zwar deshalb, weil dieser Pakt "im vollsten Masse" die Pflicht zur Selbstverteidigung anerkenne und es nicht unternehme - weil ein solches Unternehmen sich nach der menschlichen Natur verbiete - eine absolute Garantie gegen den Krieg zu schaffen.

§ 27. Der Kellogg-Pakt kennt keine Sanktionen gegen Privatpersonen. - Die politischen Führer eines Volkes mögen allenfalls im Sinne der Gedankengänge des LMT-Urteils zur strafrechtlichen Verantwortung gezogen werden, nicht aber Privatpersonen. Hierin liegt vor allem die Schwäche der Ausführungen des Hauptanklägers Jackson, der zu viel beweist und deswegen von nichts überzeugen kann. Jackson argumentiert folgendermaßen: Im Kriege werden Menschen getötet und Sachen zerstört, beides an sich Delikte, die nach der alten Auffassung dadurch ihrem rechtswidrigen Charakter verlieren, dass sie im Kriege begangen werden. Handelt es sich aber um einen verbotenen Angriffskrieg, so folgte Jackson weiter, dann müsse dieser Rechtfertigungsgrund entfallen und die Kriegshandlungen seien nichts anderes als eine Reihe verbrecherischer Akte. Wenn das richtig wäre, wäre jeder deutsche Soldat ein Verbrecher, der wegen jedes Schusses, den er im Krieg abgefeuert hat, strafrechtlich zur Verantwortung zu ziehen wäre und dann wäre auch jeder, der an

der Rüstung teilnimmt, ein Gehilfe . . . dieses Verbrechens. Das IEF-Urteil hat diese Argumentation selbst mit Stillschweigen übergangen, weil sie eine unmögliche Ausweitung des Kellogg-Paktes bedeutet.

Die Heranziehung der Privaten zur strafrechtlichen Sühne ist im Völkerrecht, von gewissen Kriegsverbrechen abgesehen, überhaupt ein novum, das den allerschwersten Bedenken begegnen muss. Das Völkerrecht ist ein Recht zwischen Staaten, selbst die Regierungen waren bisher als Einzelpersonen nicht verantwortlich, ja, sogar nach Kriegerrecht konnte der Einzelne, der auf Weisungen der Regierung gehandelt hatte, sich, von einigen gewohnheitsrechtlichen Ausnahmen abgesehen, gegenüber einer Strafanklage entlasten. Diese Haltung des Völkerrechts hat ihre guten Gründe. Wie soll regiert werden können, wenn jeder Staatsbürger sich zum Richter über die politischen Massnahmen seiner Regierung erhebt? Wer schützt ihn, wenn er mit den Gesetzen seines Landes unter Berufung auf das Völkerrecht in Konflikt gerät? Am 29.5.1931 hat der Supreme Court das im Falle Mackintosh selbst anerkannt. Mackintosh war ein in den Vereinigten Staaten lebender kanadischer Professor der Theologie, die Einbürgerung in die Vereinigten Staaten beantragte, aber dabei nur bereit war, die erforderliche Loyalitätsklausel mit dem Vorbehalt zu unterzeichnen, dass er berechtigt sei, selbst zu entscheiden, ob ein etwaiger Krieg, den die Vereinigten Staaten führen würden, gerecht oder nicht gerecht im Sinne des Kellogg-Paktes wäre; er könne sich nicht verpflichten, in einen von ihm als ungerecht erachteten Krieg zu ziehen. Die Entscheidung des Obersten Gerichtshofes der Vereinigten Staaten sprach aus, dass zwar das amerikanische Recht den conscientious objector kenne, aber dem Bürger nicht das Recht einräumen könne, dem Staat

moralische oder bewaffnete Hilfe zu verweigern, wenn seiner Ansicht nach ein Krieg nicht gerechtfertigt sei. Mackintosh könne sich also nicht das Recht vorbehalten, eine spezifisch politische Entscheidung zu treffen.

Das Problem ist uralte. Schon Rousseau, der am meisten für die geistige Begründung der modernen Demokratie geleistet hat, meinte, dass die Fragen der Außenpolitik den Kabinetten vorbehalten werden müssten und es gehört zu einer alten englischen Ueberlieferung, dass selbst die Gerichte in völkerrechtlichen Fragen eine Stellungnahme des foreign office einholen und sie ihren Urteilen zugrunde legen.

Die strafrechtliche Verantwortung des Privaten, die für die Frage des Kriegsbegins keine Rolle spielen darf, ist auch für die Fragen der Kriegsführung selbst nicht vertretbar. Auch hier handelt es sich um hochpolitische Entscheidungen, die der Beurteilung des einzelnen Staatsbürgers notwendig entzogen bleiben müssen, deswegen nicht dieser Gesichtspunkt auch bei den sonstigen Anklagepunkten der wirtschaftlichen Ausbeutung der besetzten Länder. Das Aussenrste, was Religion und Moral und nicht das Recht entwickelt hat, ist bei gewissen Tyrannen das sogenannte Widerstandsrecht, das niemals eine Widerstandspflicht gewesen ist.

§ 28. Bedeutung der Vorgänge bei der Ratifikation des Kollogg-Paktes im Reichstag für den subjektiven Tatbestand. - Endlich ist noch darauf einzugehen, dass die deutsche Regierung in der Note vom 27.4.1928 ihren Beitritt zum Kollogg-Pakt mit dem Ausdruck der sicheren Erwartung verband, dass die allgemeine Abrüstung sowie der Ausbau friedlicher Revisionsmöglichkeiten durch den Kollogg-Pakt einen starken Impuls erfahre. Dass diese sichere Erwartung bis 1933 sich als trügerisch erwiesen hat, kann im Ernst niemand bestreiten: Die

allgemeine Abrüstung scheiterte, die Zollunion mit Österreich wurde verboten, die deutschen Kolonialansprüche mit der Begründung vom Kolonialausschuss zurückgewiesen, dass Kolonien nur eine Belastung für ihre Besitzer bedeuten¹⁾. Gewiss ist diese Erwartung, die hier ausgedrückt worden ist, kein ausdrücklicher Vorbehalt, keine reservatio actualis, aber sie ist mehr als ein unbeachtliches Motiv schon dadurch, dass sie in der zustimmenden Erklärung der deutschen Reichsregierung in so feierlicher Form und an hervorragender Stelle ausgedrückt worden ist. Sie ist vielmehr ein sogenannter virtueller Vorbehalt, der nach der allgemeinen Vertragstheorie dann vorliegt, wenn man feststellen kann, dass der Beitritt zum Vertrage sicher dann unterblieben wäre, wenn der Unterzeichner den Nichtintritt seiner sicheren

- 1) Über die Ursachen der Weltkrise führt Lord Lothian am 16. Juni 1936 in "Evening Standard" u.a. aus:
"Ein neuer Weltkrieg würde nur ausbrechen, wenn die Nationen nicht imstande wären, mit friedlichen Mitteln die Verträge so zu revidieren, dass sie den Notwendigkeiten zur Aufrechterhaltung des Friedens entsprächen. Der Versailler Vertrag aber gründe sich auf der Annahme von Deutschlands Schuld am Weltkriege. In den vergangenen 18 Jahren sei weder vom Völkerbund noch von den Siegerstaaten eine freiwillige Aktion zur Milderung der Diskriminierung Deutschlands in die Wege geleitet worden. Deshalb habe sich Deutschland selbst von der Diskriminierung befreit. Eine endgültige Bereinigung mit Deutschland stehe aber noch aus: Erstens eine freiwillige Aussprache über die Zukunft, Österreichs, Danzigs und Memels und über irgend einen Ausgleich hinsichtlich der Grenzen Ungarns. Zweitens eine freiwillige Aussprache über das sog. Problem der wirtschaftlichen Befriedigung. Dazu gehöre, dass Deutschland die Lebensmöglichkeit gegeben werde, einen verbesserten Lebensstandard für seine Bevölkerung durch einen allgemeinen Abbau der Handelschranken sicherzustellen, weiter die Stabilisierung der Währungen und ein Ausgleich hinsichtlich der Kolonien, dieser als Teil einer allgemeinen Vereinbarung, die das gegenwärtige Wettrüsten beende. Man müsse das Augenmerk darauf richten, ob die Kolonialfrage ihre Erledigung durch eine territoriale Restauration finden solle oder durch weitgehende wirtschaftliche Vereinbarungen, die die Souveränität nicht berührten und auf dem Grundsatz der Treuhänderschaft aufgebaut würden."

Entsprechend heisst es in einer Rede des amerikanischen Unterstaatssekretärs W o l l e s vor dem Institute of Public Affairs in Charlottesville am 8. Juli 1937:

"Der hauptsächlichste Grund für das Fehlschlagen war aber die Einfügung des tragischen Versailler Vertrags in den Völkerbundspakt, wodurch sich der Völkerbund gerade in seiner ersten formgebenden Periode zu einem Mittel machte, die Ungerechtigkeiten und die untraglichen moralischen und materiellen Lasten, die die Sieger den Besiegten auferlegt hatten, für unbestimmte Zeit fortzusetzen."

Erwartung vorausgesehen hätte. Im internen deutschen Recht ist die Möglichkeit gegeben, in solchen Fällen die Bindung des Vertrages rückgängig zu machen und wenn es auch dahingestellt bleiben kann, ob das Völkerrecht, das in seinem gegenwärtigen Zustand zwischen den Polen eines archaischen Formalismus und fortschrittlicher Aufgeschlossenheit für moderne Rechtsvorstellungen und -bedürfnisse oszilliert, dem virtuellen Vorbehalt die gleiche Anerkennung entgegenbringt wie das interne Recht, so können doch die Angeklagten, wie alle Deutschen, die die damaligen Vorgänge verfolgt haben, für sich in Anspruch nehmen, dieser sicheren Erwartung bei dem Eintritt Deutschlands zum Kellogg-Pakt eine ausschlaggebende Bedeutung zugeschrieben zu haben. In der Reichstagsdebatte über die Ratifikation stand diese von Stresemann ausgedrückte Erwartung geradezu im Mittelpunkt aller Erörterungen. Der aussenpolitische Ausschuss des Reichstages äusserte in seiner Stellungnahme am 6.2.1929 über die Bedeutung des Kellogg-Paktes: "... dass der Pakt eine reale Bedeutung nur haben würde als Anfang einer weiteren Aktion, für die die deutsche Note vom 28.4.1928 ja auch bereits die massgebenden Gesichtspunkte hervorgehoben habe", und empfahl die Ratifikation nur zusammen mit einer dann auch angenommenen Entschliessung, in der die Reichsregierung aufgefordert wurde, durch weitere Schritte ihrer vorerwähnten sicheren Erwartung Nachdruck zu verleihen. So musste im deutschen Volk die Meinung entstehen, dass der Kellogg-Pakt die unverzichtbaren deutschen Forderungen auf allgemeine Abrüstung und friedliche Revision des Versailler Vertrages nicht nur nicht schädige, sondern geradezu neu untermauere. Wenn die nachfolgende Entwicklung des deutschen Volk in diesen Punkten enttäuschte, so konnte der Staatsbürger auf Grund der Erklärung des auswärtigen Ausschusses im Kellogg-Pakt nur eine Deklaration ohne rechtliche Bedeutung sehen.

§ 29. Russland und Russische Regierung participes

criminis des Angriffs auf Polen, deshalb iudices inhabiles bei der Verfolgung der Deutschen. Nichtigkeit des Kontrollratsgesetzes Nr. 10. - Das Londoner Abkommen und das Kontrollratsgesetz Nr. 10 haben aber noch einen weiteren Mangel, der sich rechtlich auswirken muss, und der nach der Meinung eines englischen Kritikers von IMT-Urteil, wegen der Vorlegenheit, in die er das Gericht gebracht haben würde, auch in seiner faktischen Grundlage übergangen worden ist. Das Kontrollratsgesetz bedroht den Angriffskrieg, den Hitler im Jahre 1939 gegen Polen unternommen hat, mit schwerer Strafe, obwohl feststeht, dass Russland, das ebenfalls zu den Signatarstaaten des Kolloger-Paktes gehört, als eine der Kontrollmächte, die die Verantwortung für das Kontrollratsgesetz tragen, an diesem Angriffskrieg ausweislich der vorgelegten Geheimverträge zwischen Molotow und Ribbentrop selbst teilgenommen hat. Es liegt also der Fall vor, dass eine Strafnorm erlassen oder miterlassen wird von einem Mittäter des inkriminierten Deliktes. Diese Strafnorm hat den Charakter eines Strafurteils, weil sie nicht wie das normale Strafgesetz für einen zukünftigen Akt die Strafe festsetzt, sondern für einen z.Zt. der Erlassung des Gesetzes abgeschlossenen Sachverhalt, der von einem beschränkten Täterkreis verwirklicht worden ist; das Londoner Abkommen hat ja geradezu den Titel "Abkommen zur Verfolgung und Bestrafung der Hauptkriegsverbrecher der europäischen Achse." In der amerikanischen Rechtsprechung und Literatur über das Verbot der ex post facto law ist der Unterschied zwischen dem normalen Strafgesetz für die Zukunft und der Strafnorm für ein abgeschlossenes Delikt klar herausgearbeitet. Es wird ausgeführt, dass das Verbot der ex post facto law gerade den Sinn hat, zu verhindern, dass die politische Leidenschaft eines Parlamentes, wie es in England vorgekommen war, neue Strafen für zurückliegende Handlungen festsetze, da

es allein Sache des Richters sei, auf vergangene Handlungen die geltenden Strafgesetze anzuwenden. Gesetze, die rückwirkende Strafen für abgeschlossene Tatbestände festsetzten, hätten die Bedeutung eines Strafurteils. In der grundlegenden Entscheidung *Calder v. Bull* aus dem Jahre 1798, die in der modernen Sammlung von Thayer "Cases on constitutional Law" noch heute als leading case abgedruckt ist, heisst es:

"The prohibition against their making any ex post facto law was introduced for greater caution, and very probably arose from the knowledge that the Parliament of Great Britain claimed and exercised a power to pass such laws, under the denomination of bills of attainder, or bills of pains and penalties, the first inflicting capital, and the other less punishment. These acts were legislative judgments, and an exercise of judicial power."

Um ein solches Gesetz handelt es sich bei dem Kontrollratsgesetz Nr. 10. Bei diesem gesetzlichen Strafurteil hat nun ein Teilnehmer an der Handlung mitgewirkt, die der Bestrafung zugeführt wird. Solche Urteile kann aber ein Mittäter des Angeklagten nicht aussprechen. Er urteilt in eigener Sache, er ist ein *judex inhabilis*. Handelte es sich um ein Parlamentsgesetz, liess sich aus der Uebermacht des Parlamentes gegenüber allen anderen Staatsorganen ein solches Strafurteil nach vertreten, wenn in der Verfassung des betreffenden Landes das Parlament als höchstes Willensorgan des Staates anerkannt ist, wie das in England der Fall ist. Aber in unserem Falle handelt es sich gar nicht um ein Parlamentsgesetz, sondern um ein typisches Regierungsgesetz, das, soweit Russland in Frage steht, von der gleichen Regierung erlassen worden ist, die an dem Angriffskrieg teilgenommen hat. So liegt also ein Akt der Strafrechtspflege vor, der zwar in der Form eines Gesetzes erscheint, materiell aber wie ein Urteil die Bestrafung bestimmter Täter für be-

stimmte Handlungen sichern und durchführen soll. Dieser Akt der Strafrechtspflege ist nichtig, weil ein *judex inhabilis* am Erlass des Gesetzes mitgewirkt hat.

Dass niemand in eigener Sache richten kann, ist ein allgemeines Prinzip des Rechts aller Kulturstätten und hat sich in der einen oder anderen Weise auch rechtlich überall durchgesetzt. Im Anschluss an das römische und gemeine Recht ist die Lehre im deutschen Recht besonders ausgebaut, das seit Jahrhunderten den *judex inhabilis* von *judex suspectus* trennt, und die Mitwirkung des ersteren zu einem Nichtigkeitsgrund für das Urteil auch dann macht, wenn die beim *judex suspectus* notwendige Ablehnung des Richters durch den Angeklagten bei Prozessbeginn unterblieben ist.

Die Tatsache, dass Russland zugleich verletzt worden ist, ist jedoch n.B. kein Nichtigkeitsgrund für das Kontrollratsgesetz, da bei Delikten gegen Staaten es immer so war und immer so bleiben wird, dass der verletzte Staat selbst, wenn möglich, es in Anspruch nehmen wird, die Täter zu richten. Es hätte sich zwar denken lassen, dass ein internationales Gericht zur Beurteilung des Angriffskrieges eingesetzt worden wäre und nicht ein reines Gericht der Siegermächte, besonders nachdem der französische Völkerrechtslehrer Scelle in seinen berühmten Aufsätzen darauf hingewiesen hat, dass die Richter als Angehörige der Nationalstaaten in den internationalen Prozess hineingehen, ihrer Staatsangehörigkeit schon aus nationalen Gründen mehr oder weniger g. f. sind und nicht selbst einer internationalen Status genießen, der sie vor Angriffen ihrer Regierungen schützt. Sowohl in internen wie in internationalen Bereichen entstehen durch solche Prozesse Gefahren für das Recht, das dem politischen Druck erliegen kann. Solange die internationale Organisation noch nicht stärker ausgebaut ist, muss

man diesen Zustand hinnehmen und kann nicht den Standpunkt vertreten, dass die Tatsache allein, dass die Regierung des verletzten Landes die Strafverfolgung durch ihre Richter und Beamten durchführen lässt, den dazu nötigen Staatsakten das Merkmal unheilbarer Nichtigkeit aufdrückt, dagegen ist es unmöglich, dass eine Regierung, die ebenfalls auf die Anklagebank gehört, wie es bei dem Londoner legislative judgment geschehen ist, zu Gericht sitzt wegen eines Verbrechens, das ohne ihre Teilnahme nicht begangen worden wäre.

C. Raub und Plünderung
sowie Beschäftigung
von Zwangsarbeitern.
Der Einwand des Tu
quo quo.

§ 30. Die Einheit der Kulturwelt zeigt sich ^{auch} auf rechtlichen Gebiet. - Beschränkt sich der Einwand des iudex inhabilis auf den Krieg gegen Polen, ohne die übrigen Strafbestände des Kontrollratsgesetzes zu berühren, so komme ich nunmehr auf einen Angriff gegen das Kontrollratsgesetz, der bei jedem Straftatbestand eingreift. Ich meine den Gesichtspunkt, dass die Bestrafung der Angeklagten insoweit entfallen muss, als entsprechende Völkerrechtsverletzungen auch von den Alliierten begangen worden sind.

Als Rechtsvergleicher findet man immer wieder die Beobachtung bestätigt, dass die rechtlichen Lösungen bestimmter Sachverhalte in den Kulturländern weitgehend übereinstimmen, obwohl die systematischen Ausgangspunkte grundverschieden sind und demnach die Begründung für die gefundenen Lösungen ausserordentlich stark von einander abweichen. Dieses Phänomen, das immer ^{wieder} /

die Einheit der Kulturwelt belegt, gilt in gleicher Weise auch für andere Erscheinungen des sozialen Lebens. Wie in Nürnberg schon mehrfach hervorgehoben ist, ist die Achtung vor dem Völkerrecht während des Krieges in allen Ländern gesunken und Hand in Hand mit der geringen Einschätzung des als formell und formalistisch empfundenen Völkerrechts kam jene Gesinnung auf, die mit dem totalen Krieg die Parole des catch as catch can auf den Schild erhob.

Die Nürnberger Prozesse bringen dem deutschen Volk die Bedeutung des Völkerrechts wieder zum Bewusstsein, jedoch nicht ohne - angesichts der unsicheren Rechtsgrundlage, auf der das Verhalten der Besatzungsmächte nach der Kapitulation beruht - eine grosse Verwirrung, bei vielen sogar Entrüstung hervorzurufen. Man hat das Gefühl, dass mit zweierlei Mass gemessen wird, zumal Aussagerungen höchster Besatzungsdienststellen einfach die Rechtlosigkeit der Deutschen mit dürren Worten feststellten. Seit dem Zusammenbruch hat sich eine grosse Diskussion über die Bedeutung der bedingungslosen Kapitulation entsponnen, in der, je länger umso mehr, die Unzerstörbarkeit des rechtlichen Bodens, auf dem auch das Verhältnis von Sieger und Besiegten sich aufbaut und die Unverkümmbarkeit gewisser Mindestrechte betont werden. In diesem Chaos gibt es einen Lichtblick, die Stelle im IMT-Urteil (S.155, Deutsche Ausgabe, Nymphenburger Verlagehandlung, München), in der es heisst:

"..... diese Befehle beweisen daher, dass Dönitz der Verletzung des Protokolls schuldig ist. In Anbetracht dieser Beweise und insbesondere eines Befehls der britischen Admiralität vom 8. Mai 1940, des Inhalts, dass alle Schiffe in Skagerrak bei Sicht versenkt werden sollen und in Anbetracht der Beantwortung des Fragebogens durch Admiral Nimitz, dass im Pazifischen Ozean von den Vereinigten Staaten vom ersten Tage des

Eintrittes dieser Nation in den Krieg der uneingeschränkte U-Boot-Krieg durchgeführt worden ist, ist die Dönitz zuteil werdende Strafe nicht auf seine Verstösse gegen die internationalen Bestimmungen für den U-Boot-Krieg gestützt."

§ 31. Die rechtliche Bedeutung der Freisprechung von

Dönitz. - Der Satz besagt nichts geringeres, als dass ein Verstoß gegen das Völkerrecht dann nicht geahndet werden kann, wenn die ehemaligen Feindstaaten, sei es auch bloss im Verhältnis zu einem Verbündeten Deutschlands, eine analoge Völkerrechtsverletzung begangen haben. Welche rechtliche Bedeutung hat diese Feststellung? Offensichtlich will sie nicht besagen, dass die Verstösse beider Parteien gegen das Völkerrecht eine Übung beweisen, die das verletzte Völkerrechtsabkommen ausser Kraft gesetzt haben, denn der Verstoß gegen das Völkerrecht wird *expressis verbis* festgestellt und die Auffassung des Gerichtes dargelegt, wie ein völkerrechtsgemässes Verhalten möglich gewesen wäre. Es handelt sich vielmehr darum, dass das *Tu quoque* als selbstverständlich zulässiger Einwand berücksichtigt wird. Das macht nähere Ausführungen erforderlich. Eine Klarstellung ist vor allem vonnöten. Shakespeares bekanntes Wort aus "Mass für Mass": "Was kühnert es das Recht, wenn Dieb den Dieb verurteilt", ist natürlich nicht so zu verstehen, dass der Dichter den Einwand des *Tu quoque* grundsätzlich für unerhoblich gehalten hätte, denn Shakespeare geht, wie die weiteren Verse zeigen, davon aus, dass der Diebstahl des Geschworenen, der mit zu Gericht sitzt, niemanden bekannt ist, aber gerade an dieser Voraussetzung fehlt es hier. Es geht nicht an, dass die Urteile den die Feindstaaten belastenden Sachverhalt einfach verschweigen, wie sie es im ersten Prozess bei den Angriff Russlands auf Polen getan haben, um zu den rechtlichen Folgen nicht Stellung nehmen zu müssen. Es geht auch nicht an, dass sie sich auf den Standpunkt stellen, diese

Frage gehöre nicht zur Sache, sie sei nicht Gegenstand des zu entscheidenden Prozesses, weil sie nur über die Anklage gegen die Deutschen zu befinden hätten.

§ 32. Rechtsgeschichtliche und rechtsvergleichende Betrachtungen zum Einwand des Tu quoque. - Rechtshistorisch ist das Problem des Tu quoque schon von den Römern behandelt worden. Sie lösen es dahin, dass der Magistrat, der eine Bestrafung des Täters durchgeführt hat, sich gefallen lassen muss, auf Verlangen eben dieses Täters nach denselben Rechtsgrundsätzen abgeurteilt zu werden, die der Bestrafung des Täters zugrundelagen. Justinian hat den Grundsatz und seine Anwendung auf den urteilenden Richter durch Aufnahme der Stellen des Ulpian und Paulus in den besonderen Digestentitel D 2,2,1 und 2 "Quod quisque iuris in alterum statuerit ut ipse eodem iure utatur" als gemeinsames Recht verewigt. Bei einer ausgebauten Gerichtsorganisation mag dieser Gesichtspunkt genügen. Wenn heute ein deutscher Richter, der selbst an schwarzen Markt kauft, einen Vorstoß gegen die Verbraucherregelung verurteilt, kommt alles dadurch ins gleiche, dass der Täter das Recht hat, auch den Richter anzuzeigen und dadurch der Bestrafung zuzuführen. Diese Möglichkeit fehlt hier, weil die internationale Prozessorganisation noch im ersten Entwicklungsstadium begriffen ist. Die Parallele über die rechtliche Reaktion, die der Einwand des Tu quoque durch den Angeklagten auslöst, kann daher nur in Zeiten gesucht und gefunden werden, in denen die Gerichtsordnung noch unvollkommen gewesen ist, d.h. im Mittelalter. Damals aber war es ein anerkannter Grundsatz, mindestens bei einem inneren Zusammenhang zwischen den Pflichtverletzungen beider Teile, dass man sich nur dann rechtlich zu stellen habe, wenn derjenige, der einen darauf ansprach, selbst seine rechtlichen Verpflichtungen erfüllt hatte. Im angelsächsischen Recht besagt der Grundsatz der clean hands in Equity-Recht

dasselbe, wie der Satz des Lehnrechtes "fides frangenti fides frangitur". Wie sich Flanck, der erste Kenner des mittelalterlichen Gerichtsverfahrens, ausdrückt, gab es damals den in mannigfacher Anwendung vorkommenden Satz: dass der nicht Recht fordern kann, der seinerseits nicht tut, was er zu tun schuldig ist. (S. 389 in "Das deutsche Gerichtsverfahren im Mittelalter", Braunschweig 1879). Es handelt sich hier letztlich um zutiefst im Wesen des Rechtes wurzelnde Lösungen, die auf einer Stufe mit dem Gleichheitsgrundsatz stehen, mit dem wichtigsten Satz dass man niemandem antun darf, was man selbst nicht will, der Einleitung des "corpus iuris canonici", dass es einen geschehe, ja, mit der biblischen Forderung: Richtet nicht, damit ihr nicht gerichtet werdet!

Es ist zuzugaben, dass in einem gewöhnlichen Strafprozess der Angeklagte natürlich kein Recht hat, die Einlassung zu verweigern, weil sein Richter oder sein Ankläger ein gleichartiges Delikt begangen haben. Immerhin klingt der Gedanke insofern im französischen Recht an, als dort im Zivilprozess das Recht besteht, den Richter abzulehnen, weil er eine identische Rechtsache als Partei durchzumachen hat. Ueberhaupt ist das Ablehnungsrecht, das auch im Strafprozess besteht, ja nichts anderes als eine Einlassungsverweigerung vor dem so qualifizierten Gericht. Aber für die heutige Denkweise ist diese Verweigerung der Einlassung auf eine Klage doch eher im Zivilrecht beheimatet. Im Zivilprozess kann der Beklagte die exceptio doli geltend machen, wenn der Kläger seine eigenen Verpflichtungen ihm gegenüber zu erfüllen offenbar nicht gesonnen ist. Nun ist aber festzustellen, dass der völkerrechtliche Strafprozess, um den es sich hier handelt, in seiner Struktur Elemente aufweist, die der interne Strafprozess des Staates gegen den Angeklagten nicht hat. Die Feststellung eines Völkerrechtsdeliktes setzt die Feststellung einer Völkerrechtswidrigkeit voraus und diese

Völkerrechtswidrigkeit besteht zunächst und ganz sicher im Verhältnis von Staat zu Staat. Deshalb kommt als Entschuldigung des Angeklagten, etwa bei Repressalien, durchaus die Tatsache zur Geltung, dass der Staat, gegen dessen Angehörige das völkerrechtliche Unrecht begangen ist, Angehörigen des Verletzer-Staates seinerseits Unrecht getan hat. Die Völkerrechtswidrigkeit impliziert also auch die Klärung des Verhältnisses der beteiligten Staaten zu einander und hat insoweit Elemente, wie sie die Privatrechtsordnung aufweist. Es handelt sich hier um eine Auswirkung des grundlegenden Reziprozitätsgedankens, der letztlich auf der grundsätzlichen Gleichberechtigung des Staates beruht. Das IMT-Urteil hat daher ein feines Empfinden bewiesen, wenn es ohne nähere Begründung und unter Ausschaltung des Gesichtspunktes der Repressalien einfach die Tatsache, dass die Alliierten den gleichen Völkerrechtsverstoß verübt haben, als Entlastung für den Angeklagten Dönitz anerkannt hat.

§ 33. Der totale Krieg und der von der interalliierten Kommission im Jahre 1919 ausgearbeitete Katalog der Kriegsverbrechen. - Die Entscheidung im Fall Dönitz hat darüber hinaus für den vorliegenden Prozess noch eine spezielle Bedeutung. Der Freispruch von Dönitz erkennt an, dass zur See der totale Krieg geführt worden ist. Das Gleiche gilt für den Luftkrieg. Göring ist nicht deshalb vor dem Internationalen Militärgericht angeklagt gewesen, weil er als Generalissimus der deutschen Luftwaffe den Einsatz der Luftstreitkräfte bei der deutschen Luftoffensive gegen England im Jahr 1940 geleitet hat, obwohl auch in diesem Fall Verstöße gegen die Haager Landkriegsordnung begangen worden sind.

Als im Jahr 1919 die interalliierte Kommission zur Bestrafung der Kriegsverbrecher des ersten Weltkrieges eine Bestrafung der Deutschen wegen "Verbrechen gegen die Menschlichkeit" beschliessen wollte, traten die Amerikaner diesem Vorlangen

entgegen unter Hinweis darauf, dass das "Verbrechen gegen die Menschlichkeit" ein zu verschwommener Begriff sei. Sie arbeiteten stattdessen den folgenden Katalog von 32 Delikten aus, die aus der Haager Landkriegsordnung und dem Kriegsgewohnheitsrecht gewonnen worden waren:

1. Mord, Massakrierung und systematischer Terror.
2. Festsetzung von Geiseln.
3. Marterungen von Zivilpersonen.
4. Planmässige Organisation von Hunger unter den Zivilbevölkerungen.
5. Notnützigungen.
6. Festsetzung von Frauen zum Zweck zwangsweiser Prostitution.
7. Deportation von Zivilpersonen.
8. Internierung von Zivilpersonen unter unmenschlichen Bedingungen.
9. Zwangsarbeiten, die den Zivilbevölkerungen während der militärischen Operationen in ihren Gebieten auferlegt werden.
10. Die Annäherung von Souveränitätsrechten während des Ablaufs militärischer Operationen.
11. Zwangsrekrutierung von Soldaten unter den Einwohnern der besetzten Gebiete.
12. Versuche der Entnationalisierung der Einwohner solcher Gebiete.
13. Plünderungen.
14. Vermögenskonfiskationen.
15. Einziehung von Steuern und ungesetzlichen oder übermässig hohen Requisitionen.
16. Abwertung der Währung und Ausgabe falschen Geldes.
17. Auferlegung von Kollektiv-Sanktionen.
18. Sinnlose Verwüstungen und Zerstörungen von Vermögenswerten.
19. Absichtliche Bombardierungen offener Städte.
20. Nicht notwendige Zerstörung von Gebäuden und Monumenten, religiösen und karitativen Anstalten sowie von Einrichtungen für Erziehung und Kunstwesen.
21. Zerstörung von Handelsschiffen oder von Schiffen für den Transport von Zivilpersonen ohne Vorwarnung und ohne die für die Sicherheit der Passagiere notwendigen Massnahmen zu ergreifen.
22. Zerstörung von Fischer- und Hilfsbooten.
23. Absichtliche Bombardierungen von Hospitalen.
24. Angriffe auf und Zerstörungen von Lazarettschiffen.
25. Verletzung der sonstigen Regeln betr. das Rote Kreuz.
26. Verwendung von zerstörenden und lähmenden Gasen.
27. Verwendung von Dum-Dum-Geschossen und anderen unmenschlichen Kriegsmitteln.
28. Befehl, kein Pardon zu geben.
29. Misshandlung von Kranken oder Kriegsgefangenen.
30. Beschäftigung von Kriegsgefangenen zu verbotenen Arbeiten.
31. Missbrauch weisser Fahnen.
32. Brunnenvergiftung.

Von dieser Liste der Verbrechen gegen die Abkommen und Gebräuche des Krieges sind also in den Nürnberger Prozessen alle diejenigen Delikte gegen die deutschen Angeklagten nicht

verfolgt bzw. nicht zur Grundlage einer Bestrafung gemacht worden, die die sogenannte totale Kriegsführung in der Luft und zur See ausmachen. Keine Anklage wegen Bombardements offener Städte, obwohl Göring im Jahr 1940 den Lufteinmarsch gegen England leitete, keine Verurteilung von Dönitz wegen des unbeschränkten U-Boot-Krieges, keine Anklage wegen Zerstörung von Krankenhäusern usw., d.h. alle diejenigen Delikte, die im Luft- und See-Krieg zur Durchführung des totalen Krieges begangen worden sind, sind deshalb nicht unter Anklage gestellt, weil die Alliierten die gleichen Delikte begangen haben.

§ 34. Der Bericht des amerikanischen Oberkommandierenden der Luftwaffe General Spaatz. - Am deutlichsten ergibt sich, dass der totale Krieg gegen Deutschland geplant und zum glücklichen Ende durchgeführt worden ist, aus dem Aufsatz des amerikanischen Luftgeneralissimus S p a a t z in Aprilheft der "Foreign Affairs" 1946. Er beruft sich für den uneingeschränkten Bombenkrieg gegen Deutschland nicht darauf, dass Deutschland begonnen habe, in England Städte auszuradieren, sondern er sagt, von Anfang an hätten die Engländer die Absicht gehabt, mit Hilfe ihrer Luftwaffe Deutschland in die Knie zu zwingen. Sie hätten es aber aus Mangel an Mitteln allein nicht fertig gebracht und das Bild habe sich erst geändert, als die Amerikaner, die seit den 30er Jahren diesen strategischen Gedanken verfolgt hätten, in den Krieg eingetreten seien. Im Jahre 1943 sei dann in einer Besprechung der alliierten Generalstabschefs in Casablanca beschlossen worden, den uneingeschränkten Bombenkrieg gegen Deutschland, seine Städte und Industriezentren zu führen und dadurch seine Wirtschaftsmacht zu zerbrechen und die moralische Widerstandskraft der Bevölkerung zu vernichten.

Spaatz sagt wörtlich in seinem Aufsatz "Strategie Air Power":

Strategic bombing, the new technique of warfare which Germany neglected in her years of triumph, and which Britain and America took care to develop, may be defined as being an independent air campaign, intended to be decisive, and directed against the essential war-making capacity of the enemy. Its immeasurable advantage over two-dimensional techniques is that its units (heavy bombers and fighter escorts) are not committed to position in battle; on the contrary, they carry out their assigned missions, and then return to base to prepare for fresh assault.

What makes strategic bombing the most powerful instrument of war thus far known is its effective application of:

1. The principle of mass, by its capacity to bring all its forces from widely distributed bases simultaneously to focus on single targets. Such concentration of combat power has never been possible before.
2. The principle of objective, by its capacity to select for destruction those elements which are most vital to the enemy's war potential, and to penetrate deep into the heart of the enemy country to destroy these vital elements wherever they are to be found. These main objectives, reached during hostilities by strategic bombing following the establishment of control of the air, have not been attained historically by surface forces until toward the end of field campaigns.
3. The principle of economy of force, by its capacity to concentrate on a limited number of vital target systems instead of being compelled to disperse its force on numerous objectives of secondary importance, and by its capacity to select for destruction that portion of a target system which will yield the desired effect with the least expenditure of force.

Strategic bombing is thus the first war instrument of history capable of stopping the heart mechanism of a great industrialized enemy. It paralyzes his military power at the core. It has a strategy and tactic of mobility and flexibility which are peculiar to its own medium, the third dimension. And it has a capacity, likewise peculiar, to carry a tremendous striking force, with unprecedented swiftness, over the traditional line of war (along which the surface forces are locked in battle on land and sea) in order to destroy war industries and arsenals and cities, fuel plants and supplies, transport and communications - in fact, the heart and the arteries of war economy - so that the enemy's will to resist is broken through nullification of his means.

British air leaders had this strategic concept in mind at the beginning of the war. But they lacked the means to carry it out. Their daylight raids on German industrial targets in 1940 resulted in prohibitive losses. Accordingly, the R.A.F. turned to night bombing, which was possible despite the Luftwaffe's air supremacy over Germany because effective night fighters had not yet appeared. The British developed the most effective heavy night bomber, the Lancaster, which went into action in 1943 and remained the greatest load-carrier of the air war in Europe.

The strategic concept had also been the focus of studies and planning in the United States Army Air Forces in the 1930's. The American version was built around the B-17 for precision bombing by daylight. Daylight bombing was still regarded with skepticism in some quarters because of the German experience in the 1940 Blitz and the British experience over German targets. Both our weapon and our organization remained untried. It was feared that the losses in daylight bombing would be prohibitive. Accordingly, there was an inclination on the part of experienced

war leaders to put all Allied strategic bombers on the night run.

The critical moment in the decision whether or not this should be done came on January 21, 1943. On that date the Combined Chiefs of Staff finally sanctioned continuance of bombing by day and issued the Casablanca directive which called for the "destruction and dislocation of the German military industrial and economic system and the undermining of the morale of the German people to the point where their capacity for armed resistance is fatally weakened." To implement this directive there was drawn up a detailed plan, "The Combined Bomber Offensive Plan", which was approved by the Combined Chiefs of Staff, June 10, 1943, and issued to British and American air commanders. Strategic bombing at last had the green light; and it possessed a plan of operations of its own, with an approved order of priorities in targets, to achieve the objectives of the Casablanca directive. That plan called for bombing by night and by day, round the clock."

Die deutschen Statistiken geben furchtbare Zahlen über die Wirkung des Bombenkrieges in Deutschland. Millionen von Zivilisten wurden getötet, privates Eigentum, besonders Wohnhäuser und Fabriken, aber auch unzählige Kulturdenkmäler, Krankenhäuser usw. zerstört.

§ 35. Das argumentum a maiore ad minus. - Wenn die totale Kriegsführung derartige Zerstörungen von Menschenleben und Privateigentum zum selbstverständlichen Kriegsmittel erhoben hat, lässt sich m.E. nicht die These aufrecht erhalten, dass die Heranziehung der Wirtschaftskraft der besetzten Gebiete durch die deutsche Regierung einen strafbaren Verstoß gegen die Haager Landkriegsordnung darstellt. Die Heranziehung der Zivilisten zur Arbeit ist

Wenn ein Staatsmann durch den Bombenrieg das Kriegspotential seines Landes in einer mit dem hergebrachten Recht unvereinbaren Weise angegriffen sieht, so kann ihm rechtlich nicht zum Vorwurf gemacht werden, wenn er die in sein Hand gerebete Wirtschaftskraft des Feindlandes fuer seine Kriegfuehrung heranzieht. Die Einleitung und allmaechliche Verschaeerung dieser deutschen Kriegspolitik in den besetzten Gebieten verlief parallel zur zunehmenden Anwendung von Methoden der totalen Kriegfuehrung von der anderen Seite. Mindestens muss nach den Grundsuetzen des Tu quoque denjenigen die Aktivlegitimation zur Herbeifuehrung einer kriminellen Bestrafung abgesprochen werden, der den Krieg gegen die Zivilisten selbst in so ruecksichtsloser Weise gefuehrt hat.

Ich rede hier nicht von der moralischen Seite des Problems. Feilchenfeld, auf dessen Buch ich anschliessend naecher eingehen werde, hat die Frage dahin formuliert, ob an der unrealistischen Ansicht festgehalten werden solle, dass Staaten willens sein koennten, Kriege dadurch zu verlieren, dass sie sich von Handlungen zurueckhielten, die absolut zur Erringung des Sieges notwendig seien oder ob die alte *raison de guerre* nicht eine sorgfaeltig zu ergaegende Wiederbelebung erfahren solle. Im Interesse des Voelkerrechts waere m.E. die zweite Alternative abzulehnen, da sie nur ein grosses Unglueck fuer die Menschheit braechte. Aber trotzdem ist die Praxis der Staaten in der Tat mehr den sogenannten militaerischen Notwendigkeiten gefolgt. Wie kann man sonst erklaren, dass der Staatssekretaer Stimson den Befehl gab, die erste Atombombe auf Hiroshima zu werfen und zwar ohne Androhung und ohne Warnung, obgleich beides noeglich gewesen waere?

Aber diese moralische Bewertung kann hier auf sich beruhen. Worauf es in diesem Prozess ankommt, ist die rechtliche Feststellung, dass, nachdem einmal im letzten Krieg der Bombenkrieg, ja der Atomkrieg gegen Deutschland und seine Verbündeten ohne Rücksicht auf die völkerrechtlichen Beschränkungen geführt worden ist, Deutschland, geschweige denn die angeklagten Industriellen und Kaufleute, die nur im Rahmen der Anordnung ihrer Regierung tätig wurden, von eben diesem Gegner wegen kriegsrechtlicher Verstöße, die sich auch gegen die Zivilisten wenden, aber von weit geringerer Tragweite sind, nicht zur strafrechtlichen Verantwortung gezogen werden können. Die Heranziehung der Zivilisten zur Arbeit ist ein Minus gegenüber ihrer Tötung, ebenso wie das Arbeitslassen ausländischer Fabrikanlagen einen geringeren Eingriff in das Privateigentum bedeutet als ihre gewaltsame Zerstörung durch den Bombenkrieg. Die Alliierten haben allordings diese Delikte nicht in gleicher Weise zum Mittel ihrer Kriegsführung erhoben, wie dies die Deutschen getan haben. Aber doch wohl nur deshalb, wie die Anfangs der von den Russen gezeigten Besatzungsmethoden vor dem deutschen Zusammenbruch in den kriegsrisch besetzten Randstaaten zeigten, weil die Alliierten keine Gelegenheit dazu hatten, da der Kriegsverlauf ihnen eine längere Besatzungsdauer nirgends ermöglicht hat. Wenn man einen Blick auf die Zustände wirft, wie sie sich nach dem Waffenstillstand in den besetzten Gebieten ergeben haben, kann man jedenfalls nicht sagen, dass die Ausnutzung der Wirtschaftskraft der besetzten Gebiete ausserhalb ihrer Methoden liegt.

Gegen diese Argumente a majoro ad minus kann man auch

nicht einwenden, die Wegnahme von Fabriken und die Dienstverpflichtung von Zivilarbeitern sei ein Aliud gegenüber der Bombeneinwirkung und deswegen sei der Schluss von der Erlaubtheit des Bombenkrieges auf die Erlaubtheit der deutschen Besatzungsmassnahmen nicht zwingend. Auch im Seekrieg besteht ein innerer Zusammenhang zwischen Prise und Versenkung, wie ja in der Tat in beiden Fällen das Eigentum geschmälert ist. Ueberhaupt haben die Angelsachsen, wie auf vielen Gebieten ihres Rechts an älteren Entwicklungsstufen festhaltend, nie den im 19. Jahrhundert entwickelten beschränkten Kriegsbegriff, wie ihn Rousseau definiert hat, sich wirklich voll zu eigen gemacht, man denke nur an ihre einschränkende Auslegung des Art. 23 h der Haager Landkriegsordnung ueber den Wirtschaftskrieg und ihre Behandlung des feindlichen Vermoogens im allgemeinen, bei der das Konfiskationsrecht der Krone noch heute eine Rolle spielt.

Dass es sich um ein Minus handelt, ergibt sich auch aus der mehr wirtschaftlichen Erwaegung, dass die Massnahmen der deutschen Besatzungsbehoerden, gleichviel in welche Rechtsform sie gekleidet waren, nur fuer die Kriegsdauer galten konnten. Dass die Zwangsarbeiterverpflichtung nur fuer die Kriegsdauer in Frage kam, liegt auf der Hand. Aber auch die Wegnahme einer Fabrik ist nur fuer die Kriegsdauer von Bedeutung. Es gibt drei Moeglichkeiten: Entweder gewinnt die Besatzungsmacht, die die Fabrik beschlagnahmte, den Krieg oder sie verliert ihn oder es kommt zu einem remis. Gewinnt sie den Krieg, so schliesst sie den Friedensvertrag auf Grund einer Kapitulation und legalisiert dann durch den Friedensschluss ihre Wirtschaftsmassnahmen - das Gleiche gilt fuer

den eigentlichen Vertragsfrieden fuer den Fall des rom oder sie verliert den Krieg und laesst dann natuerlich die Fabrik in den Haenden des besetzten Auslandes zurueck. Nicht umsonst formuliert das deutsche Strafgesezbuch den Diebstahl, und der Raub ist eine Abart davon, als die Wegnahme einer fremden beweglichen Sache, weil bei der unbeweglichen Sache die Wegnahme von vornherein einen ganz anderen Charakter hat, da die endgueltige Aufhebung der Eigentumsrechte des Bestohlenen hier gar nicht realisiert werden kann. Wenn man im Haag Abkommen von Raub und Pluenderung liest, ist in der Tat die Vorstellung, die einem zuerst kommt, das Bild marodierender Soldaten, die den Leuten ihre bewegliche Habe mit Gewalt wegnehmen. Was auf diese Weise verschwindet, kommt in den seltensten Faellen zurueck, wenn es sich nicht gerade um Kronjuwelen handelt, deren Identifikation aus naeheliegenden Gruenden besonders leicht ist. Bei Immobilien liegen die Dinge von Anfang an anders. Es mag sein, dass nicht alle deutschen Stellen bei ihren Enteignungsmassnahmen an eine Wendung des Krieges zu Ungunsten Deutschlands gedacht haben. Der Kaufmann ist dagegen gewohnt, alle Eventualitaeten in sein Kalkuel einzubeziehen. Fuer ihn mindestens waren alle Transaktionen ihrer Natur nach nur fuer die Kriegsdauer berechnet.

Par.36. Staatliche Wirtschaftslenkung und totale Kriegsfuehrung in ihrer Wirkung auf die Haager Abkommen
Zum Abschluss dieses Anklagepunktes sei noch auf das Buch des amerikanischen Voelkerrechtlers Ernst H. Feilchenfeld "The international economic Law of bell-igerent occupation", Washington 1942 einge-

eingegangen. Der Verfasser hat das Buch in den Jahren 1941 geschrieben, was deshalb besonders wichtig ist, weil seine Darlegungen zeigen, was ein nachdenklicher Zeitgenosse schon vor den Erfahrungen dieses Weltkrieges auf Grund der innerstaatlichen und völkerrechtlichen Entwicklung von der Weitergeltung der Haager Abkommen halten musste. Auch Feilchenfeld kann sich nicht dazu entschliessen, die Haager Abkommen im ganzen fuer absol

zu

erklären. Er weist aber mit Recht darauf hin, dass das Bild der Friedenswirtschaft, deren Grundgefüge die Haager Abkommen auch durch den Krieg hindurch aufrecht erhalten wollen, bei Ausbruch des zweiten Weltkrieges infolge der seit 1918 einsetzenden Sozialisierungsmassnahmen, der zunehmenden Wirtschaftslenkung, der innerstaatlichen Konfiskationen und Quasikonfiskationen, zu denen auch die Devisengesetzgebung zählt, gegenüber der liberalen Entstehungszeit der Konventionen tiefgreifende Veränderungen erfahren habe. Auch hätte schon der erste Weltkrieg die Tendenz zur totalen Kriegführung gezeigt, die mit der Mobilisierung auch der gesamten Zivilbevölkerung für kriegswichtige Arbeiten ^{nicht mehr der Vorstellung} entsprochen habe, auf die Rousseaus beschränkter Kriegsbegriff mit der Scheidung von Zivilisten und Militärpersonen gerichtet war. Er stellt deshalb seinen Buche in Kapitel I mehrere allgemeine Abschnitte voraus, wie "The nineteenth century Background of Section III of the Hague Regulations" und "The International Economic Law of Belligerent Occupation under the Impact of State Socialism and Total Warfare" und schreibt:

"The Hague Regulations assumed a definite kind of normal peace optimum, namely that prevailing in the nineteenth century. Since then this peacetime optimum has gone up in certain respects, but has gone down in others." (S.18, Nr. 73)

"In modern wars, a far higher percentage of civilians, including women, are called on for war work. Whole civilian populations are at least potentially made subject to forced labor for war purposes. Civilians of this kind can hardly be said to be private individuals in the sense in which this term was used when wars were supposed to be fought only by princes and armies. Their work and their wealth are of military relevance. A hostile belligerent may be tempted to treat them as such." (S.19, Nr. 75)

"If one considers the treatment now meted out to enemy property and civilians in belligerent countries and in naval warfare, one is driven towards the conclusion that the protection of civilians in occupied regions provided by the Hague Regulations is becoming a limited survival rather than the expression of universal trends and practices." (S.21, Nr. 85)

So musste jedenfalls der eindringende Beobachter in seinen rechtlichen Schlussfolgerungen unsicher sein und konnte angesichts der alsbald auf beiden Seiten einsetzenden Staatspraxis der totalen Kriegsführung nicht das Bewusstsein haben, etwas Unrechtes zu tun, wenn er sich den Anordnungen und Methoden der Regierung zur Ausnutzung der Wirtschaftskraft der besetzten Gebiete fügte.

Die totale Kriegsführung hat unsere Zeit zur unmenschlichsten Zeitempelt, die die neuere Geschichte kennt. Der Einzelne wird von seiner eigenen Regierung nur noch danach gemessen, welchen Wert er für die Zwecke der Kriegsführung hat, und der Feind hält sich für berechtigt, weil er die Kriegsmaschine, wie der furchtbare Ausdruck heisst, lähmen und zerstören will, auch den unbewaffneten Bürger auszuhungern, mit Bomben zu belagern, ja selbst in Tiefflug auf der Strasse zu erschiessen. Der Unterschied zwischen Soldat und Zivilisten scheint aufgehoben. Auch der Zivilist ist in seinem Leben bedroht oder wird durch die Zwangsarbeit praktisch zum Gefangenen gemacht. Die wirtschaftlichen Anstrengungen der modernen Grossstaaten, die schon in Frieden sich zum Teil nach Art einer belagerten Festung organisieren, legen die Zwangsarbeit ausserordentlich nahe, ja machen sie in solcher Masse zum Eckstein ihrer Wirtschaftsverfassung, dass z.B. Russland in Frühjahr 1947 in der Kommission für Menschenrechte, der UN, erklärte, dem Verbot der Zwangsarbeit und Deportation entgegenzutreten zu müssen¹⁾.

1) vergleiche Max Barth "Bemerkungen eines Europäers" in der Zeitschrift "Prisma" (München), Dezemberheft 1947, Seite 14/15.

Kann man unter diesen Umständen wirklich noch sagen, dass Zwangsarbeit und Deportation unmenschliche Kriegsverbrechen seien, die sich aus den anerkannten Rechtsgrundsätzen aller zivilisierten Nationen ergeben, wenn solche Staatspraxis schon in Frieden gilt? Wie oben dargelegt, sollte aber durch die Haager Konventionen der friedensmässige Zustand der Freiheit der Person und ihres Eigentums erhalten worden, wie er in der Tat in der glücklichen Epoche der Entstehung der Haager Abkommen noch bestand. Stellt man sich aber zwei totalitäre Staaten mit durchorganisierter Wirtschaft vor, von denen der eine den anderen kriegerisch besetzt, so müsste der Occupant, wenn die Haager Abkommen wörtlich genommen werden, im besetzten Gebiet einen paradiesischen Zustand der völligen Freiheit der Person und ihres Vermögens verwirklichen, den weder er noch der occupierte Staat seit dem Übergang zum totalitären System gekannt haben. Dieses Beispiel zeigt, dass die Praxis der ^{Besatzungsmächte} ~~der~~ ¹⁾ ~~die~~ ja auch für Ruhe und Ordnung in den besetzten Gebieten zu sorgen haben, durch den Strukturwandel der Friedenswirtschaft auch in Kriege zu neuartigen Besatzungsmethoden gezwungen ist, für die der Haager Codex nicht die unverrückbare Grundlage bilden kann.

Nebenbei bemerkt wird dieser Gesichtspunkt auch häufig von den Kritikern der heute in Deutschland geübten Besatzungspraxis nicht genügend berücksichtigt, wenn auch nach der Kapitulation natürlich noch andere Rechtsgrundsätze eingreifen.

1) man denke nur an das moderne Arbeitslosenproblem -

D. Verbrechen gegen die
Menschlichkeit. Keine
Strafbarkeit der Pri-
vatpersonen nach Völ-
kerrecht.

§ 37. Die völkerrechtlichen Grundlagen. - Di

Verbrechen gegen die Menschlichkeit, ein neuer strafrechtlicher Tatbestand, dessen Konturen sich eben erst abzuzeichnen beginnen, sollⁿ zur Löserung des dritten Hauptproblems, nämlich der völkerrechtlichen Strafhaftung der Privatpersonen, Anlass geben.

Die grundsätzliche Seite des Problems ist schon bei der Frage gestreift worden, ob der Genocide-Pakt eine individuelle Verantwortlichkeit der Staatsbürger beinhaltet, wobei der Fall Mackintosh herangezogen wurde. Die Autoren betonten, dass die Regierung eines Landes ihre Handlungsfreiheit verliert, wenn jeder Staatsbürger sich im Namen des Völkerrechts zum Richter innerpolitischen Entscheidungen aufwirft und der einzelne völlig machtlos ist, wenn er im Namen des Völkerrechts sich weigert, den Befehlen seiner Regierung Folge zu leisten, bezogen auf beiden Seiten des Problems: die Außenpolitische und die innerpolitische.

Was nun mit der völkerrechtlichen Seite betrifft, so hatte schon die interalliierte Kommission zur Festsetzung der deutschen Kriegsverbrecher des ersten Weltkrieges den Begriff der Verbrechen gegen die Menschlichkeit als zu verschwommen abgelehnt. Auch das I.M.T.-Urteil

hat von dem neuen Straftatbestand angesichts der Möglichkeit, mit den Delikten des allgemeinen Strafrechts und Kriegerechts auszukommen, einen sehr zurückhalten- den Gebrauch gemacht, ja, praktisch daraus keine Folgerungen gezogen. Darüber belehrt ein Vortrag, den der französische Hauptrichter beim Internationalen Militärgerichtshof, der "Altmeister des Internationalen Strafrechts", Professor Donnedieu de Vabre, kurz nach seiner Rückkehr aus Nürnberg an der Sorbonne gehalten hat:

".....Die Sorge um die Aufrechterhaltung staatlicher Autonomie - was gleichbedeutend ist mit der Anwendung eines unbestrittenen Grundsatzes, nämlich der Arbeitsteilung auf die zwischenstaatlichen Beziehungen - hat auch den Gerichtshof beschäftigt. Das geht hervor aus der Einstellung, die er gegenüber den im Statut vorgesehenen und in der Anklageschrift weitgehend zur Geltung gekommenen Anklagepunkt....., Verbrechen gegen die Menschlichkeit, eingenommen hat..... Die Beschuldigung der Verbrechen gegen die Menschlichkeit ist gleichfalls eine Neueinführung, insofern, als sie über die strafbaren Handlungen des allgemeinen Rechtes, Mord, Körperverletzung - hinausgeht und sich auf schlecht umschriebene Tatbestände erstreckt, die das allgemeine Recht nicht mit Strafe belegt, wie Verfolgung aus politischen, religiösen oder rassischen Gründen. Die Anklageerhebung wegen solcher Tatbestände birgt die Gefahr in sich, dass damit der Willkür Tür und Tor geöffnet werden.... Als er (Hitler) sich des Sudetenlandes und Danzigs bemächtigen will, wirft er den Tschechoslowaken und Polen Verbrechen gegen die Menschlichkeit vor. Derartige Beschuldigungen bilden einen

Vorwand, um sich in die inneren Verhältnisse fremder Staaten einzumischen. Sie sind eine Beeinträchtigung ihrer Unabhängigkeit. Sie sind gefährlich für den Frieden.

Schliesslich sind sie auch dem Völkerrecht ebenso unbekannt, wie dem internen Recht der meisten Staaten. Man konnte sie nur vertreten und geltend machen, indem man sowohl dem Geist als auch dem Buchstaben nach den Grundsatz der Legalität der Verbrechen und Strafen verletzte."

Aber nicht nur die Einführung des neuen Deliktes ist ein ex post facto law, sondern auch die Verantwortlichmachung der Einzelnen, zumal unter Ausschaltung der Berufung auf den höheren Befehl. Das Völkerrecht hatte bisher die Verantwortlichkeit der Privatpersonen für Missetaten der politischen Organe des Staates abgelehnt. Eine Bestrafung gegnerischer Kriegsverbrechen ist nach den Regeln des überkommenen Völkerrechts dann ausgeschlossen, wenn die Tat nicht aus eigenem Antrieb begangen wurde, sondern auf höheren Befehl, wenn sie daher völkerrechtlich nicht dem einzelnen Täter selbst, sondern der Staatsführung zuzurechnen ist. In dem berühmten Standardwerk der englischen Völkerrechtswissenschaft, dem "International Law" Oppenheim (4. von A. Mc. Nair besorgte Auflage von 1926, § 253) heisst es:

"Violations of rules regarding warfare are war crimes only when committed without an order of the belligerent Government concerned. If members of the armed forces commit violations by order of their Government, they are not war criminals, and may not be punished by the enemy, the latter may, however, resort to reprisals."

Bekannt ist auch, dass die Versuche gescheitert sind, die U-Boot-Kommandanten dadurch ^{im Wege eines Staatsvertrages} einer unmittelbaren völkerrechtlichen Strafhaftung auszusetzen, dass man sie für den Fall der Verletzung des Seekriegsrechtes den Piraten als *hostes generis humani* gleichsetzen wollte.¹⁾

Im Urteil des Nürnberger Juristenprozesses wird der entgegengesetzte Standpunkt vertreten. Die noch im IMT-Verfahren von dem französischen Anklagevertreter de M e n t h o n in seiner Anklagerede vom 17. Januar 1946 ausgesprochene Beschränkung der Verantwortlichkeit "auf diejenigen, die unmittelbar für den Staat handeln", wird hier nicht mehr gemacht. Jetzt soll sogar jeder Untertan eines Staates den Tatbestand eines Völkerrechtsverbrechens erfüllen, wenn ihm nachgewiesen wird, dass er "wusste bzw. wissen musste, dass er in Angelegenheiten von völkerrechtlichem Belang sich der Teilnahme an einem staatlich organisierten System der Ungerechtigkeit und Verfolgung schuldig gemacht hat, welches das sittliche Gefühl der Menschheit verletzt, und dass er wusste bzw. wissen musste, dass er im Falle der Festnahme bestraft werden würde." (Seite 32a des Urteils)

Die klaren Formulierungen zeigen, dass hier ein Bruch mit der bisherigen Lehre des Völkerrechts vorliegt, was auf die Anerkennung einer *ex post facto law* hinausläuft. Natürlich soll mit dem Vorstehenden nicht gesagt werden, dass gemeine Delikte nicht strafbar seien, dann aber muss die Anklagebehörde auch solche behaupten und beweisen.

Jedenfalls hat der französische Vorschlag in der UN, der freilich nicht die Mehrheit der 8. Konferenz zu der Straf-
~~rechtskonferenz~~ vereinigen konnte, gerade

1) vgl. Grewe a.a.O. S. 20 ff.

für die Verbrechen gegen die Menschlichkeit, die in besonderem Masse staatlichen Veranstaltungen zu entspringen pflegen, die Beschränkung der Strafbarkeit auf die verantwortlichen Staatsführer vorgesehen und die ausführenden Organe nur dem gemeinen Strafrecht unterstellen wollen. Im Rapport du délégué de la Suisse, M. Jean G r a v e n , professeur à la Faculté de droit et juge à la Cour de cassation de Genève, présenté à la VIIIe Conférence internationale pour l'unification du droit pénal, à Bruxelles, Juli 1947 heisst es unter dem Titel "La répression du crime contre l'humanité":

" Le mémoire français présenté à l'Assemblée des N.U. a considéré que seuls les "gouvernants", c'est à dire "ceux à qui remonte l'initiative à la décision de l'entreprise criminelle, peuvent être poursuivis sous la qualification spécifique de "crime contre l'humanité"; eux seuls devraient répondre de leur acte devant la Cour de Justice Internationale "appeler à déterminer les responsabilités étatiques et à fixer leur sort". Quant aux exécutants, quels que soient leurs mobiles, ils ne seraient que de vulgaires meurtriers et assassins, gouvernés par le droit commun, auquel il n'y aurait que des inconvénients à les soustraire: il n'y aurait donc qu'à les juger d'après les dispositions et devant les tribunaux ordinaires en tenant compte naturellement, pour la fixation de leur culpabilité et de leur peine, des effets de "l'ordre supérieur" auquel ils auraient obéi".

Damit wird in dem französischen Vorschlag die völkerrechtliche Tradition aufgenommen, wie sie z.B. in dem Genfer Antisklavereiabkommen von 1926 festgelegt ist. Dieses Abkommen ist nahezu von allen Staaten der Welt ratifiziert

worden, auch von den USA, die freilich durch einen Vorbehalt gegen Artikel 5, Ziffer 2, die in der übrigen Welt völkerrechtlich anerkannte Zwangs- und Pflichtarbeit für öffentliche Zwecke für ihr eigenes Land verworfen haben. In Artikel 5 ist übrigens vereinbart, dass Zwangs- und Pflichtarbeit für öffentliche Zwecke sogar mit Wechsel des Wohnsitzes und ohne Entlohnung erlaubt ist.

In Artikel 5 heisst es:

" Die Hohen Vertragsschliessenden Teile erkennen an, dass die Anwendung der Zwangsarbeit oder der Arbeitspflicht ernste Folgen haben kann, und verpflichten sich, jeder für die seiner Staatshoheit, seiner Gerichtsbarkeit, seinem Schutze, seiner Oberherrlichkeit oder seiner Vormundschaft unterstellten Gebiete, durch zweckmässige Massnahmen zu verhindern, dass die Zwangsarbeit oder Arbeitspflicht der Sklaverei ähnliche Verhältnisse herbeiführt.

Es besteht Einverständnis darüber:

- 1) dass vorbehaltlich der nachstehend in Ziffer 2 enthaltenen Übergangsbestimmungen Zwangsarbeit oder Arbeitspflicht nur zu öffentlichen Zwecken verlangt werden kann.
 - 2) dass die Hohen Vertragsschliessenden Teile in Gebieten, wo Zwangsarbeit oder Arbeitspflicht zu anderen als zu öffentlichen Zwecken noch besteht, sich bemühen werden, diesen Übung in zunehmendem Masse und so rasch als möglich ein Ende zu machen, und dass diese Zwangsarbeit oder Arbeitspflicht, solange sie noch besteht, nur ausnahmsweise gegen eine angemessene Entschädigung und unter der Bedingung, Anwendung finden wird, dass kein Wechsel des gewöhnlichen Wohnsitzes verlangt werden darf,
 - 3) dass in jedem Falle die Zentralbehörde des betreffenden Gebietes die Verantwortung für die Anwendung der Zwangsarbeit oder der Arbeitspflicht tragen soll."
- ./.

Durch die unter Ziffer 3 aufgeführte Bestimmung werden allein die Regierungen mit der völkerrechtlichen Verantwortlichkeit belastet und die beteiligten Privatleute davon freigestellt in Übereinstimmung mit den allgemeinen Grundsätzen des Völkerrechts, wie sie oben des näheren dargelegt sind.

§ 38. Die innerstaatliche Problematik. - Um an eine persönliche Reminiszenz anzuknüpfen: Wenn man vor 1933 von den Greueln der russischen Revolution, von den Zuständen in russischen Zwangsarbeiterlagern las, sagte man sich: "Gottlob, sind wir hier in Deutschland und nicht in Russland. Bei uns wären solche Zustände gar nicht denkbar!"

Wenn die amerikanischen Richter nunmehr durch die Nürnberger Prozesse von den Zuständen in deutschen SS-Lagern erfahren haben, werden sie ähnliche Gedanken hegen und sich sagen: "In Amerika wären solche Dinge unmöglich!" Um klarzulegen, wieso diese Dinge möglich wurden, die in Deutschland jeder vernünftige Mensch für völlig ausgeschlossen gehalten hat, muss vor allem auf die Entwicklung der deutschen Verfassungszustände hingewiesen werden, die von einem gewissen Zeitpunkt an eine absolute Unwiderstehlichkeit aller vom Staat durchgeführten Massnahmen, selbst schwerster Verbrechen, hervorgerufen haben. Anfangs hatte der Nationalsozialismus, insbesondere bei der Bekämpfung der Arbeitslosigkeit, ins Auge springende Erfolge und bekam auch von Skeptikern eine Chance.

Diese Zeit der wirtschaftlichen Erholung benutzte das Regime dazu, über ganz Deutschland ein engmaschiges, stählernes Netz zu werfen, den nationalsozialistischen

Machtapparat, übrigens nicht ohne Verwendung ausländischer Vorbilder, zu einem Moloch auszugestalten, der die Menschen frass und dem Volke keine Wahl mehr liess. Als das Tarnungssystem an manchen Stellen brüchig wurde, und einzelne Hellhörige trotz der Propaganda ^{nicht} dachten, dass die Regierung auch vor Verbrechen ^{nicht} zurückschreckte, da war es zu spät, und dieser Vorgang wiederholte sich allenthalben.

Damit sind juristische Probleme von unerhörter Schwierigkeit aufgeworfen. Unser bisheriges Strafrecht hatte kein System entwickeln müssen und entwickelt, das dem verbrecherischen Staat (Etat criminel) sich hätte gewachsen zeigen können. Galt doch der Staat selbst bisher als der Träger der Rechtsordnung und des Rechtsfortschrittes. Nun aber hatten in Deutschland gewissenlose Positivisten die Macht an sich gerissen, die das ganze Volk ihren Zwecken dienstbar machte. An sich ist es einleuchtend, dass die furchtbaren Zustände, die in deutschen Kz-Lagern herrschten, auch nach einer strafrechtlichen Sühne verlangen und es ist zu verstehen, dass in der ersten Empörung über diese Untaten, die durch das bisherige Strafrecht gezogenen Grenzen des Täterkreises überschritten worden sind, um alles, was mit diesen Taten irgendwie in Verbindung stand, strafrechtlich ^{zu} erfassen. Es ist ja geradezu die Eigentümlichkeit der Delikte gegen die Menschlichkeit, über den einzelnen schon nach den überkommenen Strafrecht kriminellen Akten wie Mord, Körperverletzung usw. noch einen umfassenderen Tatbestand der Verfolgung aus rassistischen, religiösen oder politischen Gründen aufzurichten, der den Kreis der Verantwortlichen naturgemäss weiterzieht.

Aber gerade im totalen Etat criminel wird dadurch die Zahl der Betroffenen in ganz unerträglicher Weise gesteigert.

Jeder, der in Deutschland irgendeine Tätigkeit entfaltet, sei es an der Front oder in der Heimat, selbst wenn er nur Steuern bezahlte oder sein Land bestellte, unterstützte damit an seinem Teil objektiv das verbrecherische Regime, war also Gehilfe der von diesen begangenen Verbrechen, wenn er davon etwas wusste.

Das IMT-Urteil hat sich aber mit Recht gegen den Gedanken der Kollektivschuld gewehrt und z.B. bei der SS scharf zwischen dem Beitritt zur verbrecherischen Gruppe und der Begehung der Verbrechen ^{selbst} unterschieden.

Im IMT-Urteil heisst es (S.113 der Nymphenburger Ausgabe):

" Der Gerichtshof erklärt jede Personengruppe als verbrecherisch im Sinne des Statuts, die sich aus solchen zusammensetzte, die offiziell als Mitglieder in die SS aufgenommen waren, entsprechend der in vorhergehenden Absatz gegebenen Aufzählung, die Mitglieder der Organisation wurden aber blieben und Kenntnis davon hatten, dass sie für die Begehung von Handlungen verwendet wurden, die von Artikel 6 des Statuts als verbrecherisch erklärt sind oder die als Mitglieder der Organisation in die Begehung solcher Verbrechen verwickelt waren, jedoch unter Ausschluss derer, die vom Staat auf solche Art in ihre Reihen eingestellt wurden, dass ihnen keine andere Wahl blieb und die keine solchen Verbrechen begingen."

Mit diesen Zitat ist zugleich der zweite Gesichtspunkt angeschnitten, durch den die strafrechtliche Verantwortlichkeit eingeschränkt wurde: Die Verwendung des Notstandsbegriffes. Wenn der SS-Mann keine Wahl hatte, sich der Einziehung zur SS zu entziehen, ist seine Zugehörigkeit zur SS ^{selbst bei Kenntnis der von dieser begangenen Verbrechen} nicht strafbar, sofern er nur selbst keine Verbrechen begangen hat. Aber mit dieser Formulierung soll natürlich nicht gesagt sein, dass für die weiteren Taten, die er aufgrund seiner erzwungenen Zugehörigkeit zur SS begangen hat, die Entschuldigung des Notstandes entfallen müsste. Man mag den rechtswidrigen Befehl als

solchen als Entschuldigung ausschliessen, aber die damit verbundene Zwangssituation bleibt auf jeden Fall beachtlich. Im normalen State hat der Untergebene im allgemeinen die Möglichkeit, sich über den rechtswidrigen Befehl zu beschweren, und findet dann höheren Ortes sein Recht. Im Etat criminel ist diese Chance nicht gegeben. Hier wählt der Rekonstruant seinen eigenen Untergang, oder doch höchste Gefahr für sich und die Seinen nach dem Prinzip der Sippenhaftung. Trotzdem hat es einen Sinn, wenn das Londoner Statut bei den Angeklagten des ersten Prozesses, die sämtlich leitende Persönlichkeiten des Staates waren, den Befehl nur als Strafmilderung, nicht als Strafausschliessung gelten lässt. Für diese bestehen noch andere Möglichkeiten, sich im Ernstfall zu schützen, als für den Privatmann. Deswegen ist in dem ersten Prozess, in dem es sich nur um Privatleute handelte, in dem Verfahren gegen Flick, der Notstandsbegriff in weiten Umfang zur Entlastung der Angeklagten verwendet worden. Im Flick-Urteil heisst es auf Seite 10733-10736 des deutschen Protokolls:

"Die Angeklagten Walter Funk und Albert Speer^{sind} 7 von IMT wegen ihrer Teilnahme an Sklavenarbeitsprogramm verurteilt worden. Es ist jedoch klar, dass die Beziehung Speer's und Funk's zu einem dergleichen Programm sich wesentlich von der Art und Weise unterscheidet, in der die hier Angeklagten an diesem Programm teilgenommen haben, Speer und Funk zählten zu den Spitzenfunktionären, die für das Sklavenarbeitsprogramm verantwortlich waren...¹⁾

1) Die Minister Speer und Funk und auch der in Nürnberg verurteilte Generalfeldmarschall Milch waren Mitglieder des Ministerrates für die "Zentrale Planung", der nach Ansicht des IMT neben dem Generalbevollmächtigten für den Arbeitseinsatz, Sauckel, die Verantwortung für das sogenannte Sklavenarbeitsprogramm trägt. Auch der Angeklagte Milch hat der "Zentrale Planung" nicht angehört.

Unserer Ansicht nach sollen diese Bestimmungen (gemeint ist Absatz 2 des Artikels II und § 4b des Artikels II des Kontrollratsgesetzes 10) nicht dazu dienen, einen Angeklagten der Schutzbehauptung des Notstandes zu berauben, wenn es sich um Umstände handelt, wie sie in diesen Fällen bezüglich der Angeklagten Steinbrink, Burkart, Kaltsch und Terberger ersichtlich geworden sind. Man könnte dem erkennenden Gericht den Vorwurf machen, Rache statt Gerechtigkeit zu üben, falls es ihnen die Schutzbehauptung des Notstandes, die hier für die Angeklagten geltend gemacht worden ist, nicht zugestehen wollte. Dieser Rechtsgrundsatz ist in erheblichem Umfange in amerikanischen und englischen Gerichten zur Anwendung gelangt und ist auch anderweitig anerkannt.

Wharton's "Criminal Law", Band I, Kapitel VII, Unterabteilung 126, enthält die folgende Stellungnahme zur Schutzbehauptung des Notstandes, wobei Einzelfälle zur Erhärtung angezogen werden:

Die Tatsache des Notstandes kann als Schutzbehauptung geltend gemacht werden, falls bewiesen wird, dass die zur Last gelegte Handlung begangen wurde, um einen sowohl schweren wie nicht wiedergutzumachenden Rechtsnachteil abzuwehren, ferner, dass es keine andere zureichende Möglichkeit gab, sie zu vermeiden, und dass die Abwehr nicht im Missverhältnis zum angedrohten Rechtsnachteil stand.

In einer Passnote unter Unterabteilung 384 in Kapitel XIII von Wharton's "Criminal Law", Band I, ist über die grundlegende Begriffsbestimmung der Schutzbehauptung des Notstandes folgendes gesagt:

Notstand ist ein Rechtfertigungsgrund, da niemand ohne den auf ein Verbrechen gerichteten Vorsatz an diesen schuldig sein kann. Liegt unwiderstehlicher physischer Zwang vor, dann fehlt der Wille des Handelnden für die Tat. (Lord Mansfield in Stratton's Case, 21 How.St.Tr.(Engl.) 1046-1223.

Die Anklagebehörde hat in dem Schlussplaidoyer behauptet, dass die Angeklagten die Schutzbehauptung des unwiderstehlichen Zwanges nicht geltend machen könnten. In diesem Plaidoyer hat die Anklagebehörde auf Absatz 4, Ziffer b des Artikels II, Kontrollratsgesetz 10, verwiesen und erklärt:

Dieser Rechtsgrundsatz kam sehr häufig in Militärgerichtsverfahren zur Anwendung und Auslegung.

Im gleichen Plaidoyer heisst es:

Die Angeklagten haben uns wiederholt in klagenden Ton versichert, dass sie weder Militärpersonal noch Regierungsbeamte waren. Keine der Handlungen, die ihnen unter irgend einem Punkt der Anklage zur Last gelegt werden, wurden unter "Befehlen" derart begangen, wie wir erörtert haben. Nach ihren eigenen Zugeständnissen sind sie unserer Ansicht nach nicht in der Lage, die Rechtswohltat des Grundsatzes der "Höheren Befehle" auch nur als strafmildernd geltend zu machen.

Diesen Ausführungen folgt sofort die nachstehende: Die Schutzbehauptung des Zwanges oder der Notlage hat einen gewissen Anwendungsbereich im Zivilrecht. Aber trotz ihrer verzweifelten Anstrengungen ist es den Angeklagten unserer Ansicht nach nicht gelungen, zu beweisen, dass sie unter Umständen gehandelt haben, welche die Annahme rechtfertigen würden, dass diese Begriffe hier anzuwenden wären.

Die Anklagebehörde hat weiter behauptet, dass diese Schutzbehauptung nur anwendbar sei, falls die Angeklagten unter einer "eindeutigen und gegenwärtigen Gefahr" gehandelt hätten. Gewisse gesetzliche Vorschriften und Entscheidungen werden zur Erhärtung dieses Standpunktes angezogen.

Die Beweisaufnahme hat jedoch bezüglich der Angeklagten Steinbrink, Burkart und Törberger unserer Ansicht nach eindeutig ergeben, dass

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es sich in vorliegenden Falle um eine "eindeutige und gegenwärtige Gefahr" im Sinne dieses Ausdruckes gehandelt hat.

Wir haben bereits das Schreckensregiment des Reiches erörtert. Die Angeklagten lebten im Reichsgebiet. Das Reich war durch seine Massen von Vollzugsbeamten und Gestapo "allgegenwärtig", jederzeit einsatzbereit und in der Lage, unverzüglich grausame Strafen gegen jedermann zu verhängen, der etwas tat, das als Sabotage oder Behinderung der Ausführung von Regierungsbestimmungen oder Erlassen hätte ausgelegt werden können. Bei der Erwägung der Anwendbarkeit der Rechtsgrundsätze über die Schutzbehauptung des Notstandes sei auf die folgenden Ausführungen verwiesen:

Auf dem Gebiete des Notstandes wird sich kaum eine grosse Anzahl scharf abgrenzender Bestimmungen finden lassen.

Der Zwang selbst schafft neues Recht, setzt bestehende Bestimmungen ausser Kraft und was immer in solchen Fällen vernünftig und billig erscheint, ist auch gesetzlich. Es darf daher nicht überraschen, wenn nicht viel gesetztes Recht (sic) zu diesem Gegenstand vorliegt.

(Wharton's "Criminal Law", Band I, Kapitel VII, Unterabteilung 126 und angezogene Fälle).

Im vorliegenden Falle ergibt sich aus den Zeugnisaussagen unserer Ansicht nach eine tatsächliche Lage, die eindeutig die Anwendung der Schutzbehauptung des Notstandes gestattet, die namens der Angeklagten **S t e i n b r i n k** , **B u r k a r t** , **K a l e t s c h** und **T e r b e r g e r** vorgebracht worden ist."

Man sieht daraus, dass es eben einfach nicht angeht, die Verstrickung des Einzelnen in seiner nationalen Ordnung zu ignorieren und von Völkerrecht aus eine Strafbarkeit des Einzelnen als Gehilfen des verbrecherischen to-
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talitären States zu bejahen. Die normalen Teilnahmeformen werden hier für die Erfassung von Sachverhalten verwendet, für die sie nach ihrer Herkunft nicht berechnet sind.

§ 39. Zum subjektiven Tatbestand: Die Situation der Intelligenz in Deutschland. - Jeder der Angeklagten hat Beweise dafür erbracht, dass er während seines ganzen Lebens den Fortschritt der Menschheit auf sozialen, wirtschaftlichen, medizinischen und allgemein zivilisatorischen Gebieten gedient und diese Gesinnung auch während der Hitlerzeit in zahlreichen ^{menschlichen} Handlungen bewährt hat. Als ein Beispiel unter vielen sei hier nur an die personalpolitischen Fragen erinnert, die durch die staatlichen Massnahmen zur Ausschaltung der Juden aus dem deutschen Wirtschaftsleben aufgeworfen waren. Diese Männer sind nun hier wegen Beschäftigung von Zwangsarbeitern, Kriegsgefangenen, Kz-lern und der diesen zuteil gewordenen Behandlung unter Anklage gestellt.

Wie kamen diese Männer in die Nähe des Verbrechens, so dass überhaupt ein solcher Verdacht gegen sie entstehen konnte?

Die oben dargelegten Umstände geben die Lösung. Man muss sich in die damalige Zeitlage hineinversetzen, um die Haltung der Angeklagten zu begreifen. Ich will im folgenden versuchen, ihre subjektive Lage, d.h. ihre Beweggründe darzulegen. Ich gehe dabei von der typischen Haltung des im Grunde unpolitischen deutschen Intellektuellen aus, über den die Bewegung des Nationalsozialismus wie ein Naturereignis hereingebrochen war, ohne dass er den blutigen Ernst dieser Ideologie zunächst voll erfasste, da er die entscheidenden Impulse seiner geistigen Existenz in ganz anderen Zeiten empfangen hatte. Die Verstrickung des Einzelnen in sein mehr oder weniger beschränktes Fachgebiet führte ihn erst allmählich immer enger an den Staats- und Parteiapparat heran, wobei er als typischer Spezialist sich zunächst damit zufrieden gab, dass in seinem Sektor in ganzen die Arbeit voran ging. Dabei störten ihn natürlich gewisse Begleitumstände des totalen Staates, die er aber zunächst als Kinderkrankheiten auffasste und auf deren Überwindung er hoffte.

Andere sagten sich auch, dass sie deshalb diese Dinge in Kauf nehmen müssten, weil es gelte, den Ansturm des Bolschewismus gegen Europa aufzuhalten und dass nach einer alten geschichtlichen Erfahrung nur dann eine Chance bestehe, wenn man einem neuartig gerüsteten Feind mit dessen eigenen Methoden begegne. So hatte Preussen nach der Niederlage des Jahres 1806 nur durch die Uebernahme vieler Ideen und Massnahmen des revolutionären Frankreichs die Kraft gewinnen können, zum Sturz Napoleons Entscheidendes beizutragen.

Erst nach Ausbruch

des Krieges

des Krieges wurden aus diesen Randerscheinungen auch für den Einzelnen zentrale Geschehnisse und er empfing Eindrücke von der wissenschaftlichen Brutalität und Grausamkeit dieses Staates, wenn ihm auch deren volles Ausmass meist bis zum Ende verborgen blieb.

Dadurch wurde Grundmotiv seines Verhaltens mehr und mehr die Angst, mit diesem Staat in Konflikt zu geraten und als Saboteur, Defaitist oder weltanschaulicher Gegner mit seiner Familie vernichtet zu werden. Diese Angst wurde umso grösser, je enger er mit den Grausamkeiten des Systems in Beführung kam. Hitler kannte die Abneigung des normalen Deutschen gegen seine Methoden sehr wohl und erzwang daher mit allen Mitteln der Bedrohung die Entscheidung in der von ihm gewünschten Richtung.

Trotzdem wäre es unrichtig, das Handeln dieser Männer allein aus der Furcht zu erklären. Der Intellektuelle ist gewohnt, sich über seine Lage und die Motive seines Handelns bis ins Einzelne Rechenschaft zu geben. Jeder von uns hat unter dem vergangenen System Stunden erlebt, in denen die nackte Angst alles andere verdrängte. Wenn aber wieder eine gewisse Beruhigung eingetreten war, machte man sich auch andere Gedanken. Auch bei den Angeklagten war dies der Fall. Auch sie stellten Erwägungen an, die ihre Haltung auch sachlich zu rechtfertigen schienen, wobei es den Psychologen überlassen werden muss, zu entscheiden, wie weit es sich bei diesen Rationalisierungen nur um Verdrängungsergebnisse gehandelt hat. Jedenfalls müssen selbst retrospektiv einige dieser Erwägungen als zwingend angesehen werden, die in ihrem Zusammenklang eine Situation ergeben, die als echte Pflichtenkonflikte anzuerkennen ist.

- 1) Zunächst die nationale Frage: Sollte man sabotieren auf die Gefahr hin sein Volk, dessen Disziplin u. Opferbereitschaft auch die schwerste Belastung geduldig hinnahm^{en} einer Niederlage in diesem Kampf um Sein oder Nichtsein auszusetzen?

Man muss die Tragik des Mannes empfunden haben, der in dem Zwiespalt zwischen der Liebe zu seinem Volk und Vaterland und dem Wunsch, der von ihm als verdorbenlich erkannten Nazi-tyrannie ein Ende zu bereiten, vorgablich nach einem gangbaren Ausweg suchte. Seine Kinder standen an der Front. Durfte er sich da versagen? Denn bis zum 20. Juli 1944 glaubte man noch in weiten Kreisen der Intelligenz, dass es der deutschen Generalität gelingen werde, Hitler zu stürzen und den Krieg unter Vermeidung einer totalen Niederlage zu beenden.

- 2) An jedem dieser Männer hing eine vielfältige schwere Verantwortung, nicht nur gegenüber den Zwangsarbeitern, Kz-lern und Kriegsgefangenen, sondern auch gegenüber den freien Arbeitern, die ja den grössten Teil der Belegschaft ausmachten, ganz zu schweigen von den Resten des alten Deutschlands, der freien Wissenschaft, den Kirchen, jener Presse, die sich noch ein gewisses Eigenleben bewahrt hatte, - ihnen allen bedeutete die I.G. Stütze und Stab. Durfte man sie einfach im Stich lassen?
- 3) Wenn sich die Angeklagten wirklich aus der Nähe des Verbrechens zurückgezogen, sich zur Front oder an einen anderen Posten gemeldet hätten, so mussten sie sich sagen, dass sie zwar in grösserer Distanz von den Untaten, aber nicht minder nachhaltig dem Etat criminal dienen würden und zwar ohne dass damit ein praktischer Erfolg für die Verhinderung der Verbrechen erzielt worden wäre, weil der Nachfolger genau wie sie selbst hätte handeln müssen.
- 4) Ja, die Angeklagten durften sich sagen, dass es eine höhere Pflichterfüllung sei, die Stellung zu halten, um mit ihrer Hilfe den Schlechten nach Möglichkeit entgegenzutreten und

das Gute zu stärken, als um selbst der Verantwortung zu ent-
gehen, ^{einem} skrupellosen systemtreuen Nachfolger das Feld zu
räumen. Wenn man sich vergegenwärtigt, dass gerade die I.G.
auf dem Gebiet der sozialen Betreuung in ganz Europa den Ruf
eines führenden Unternehmens genoss, kann die Gefahr einer
solchen Verschlechterung, die insbesondere auch die Zwangsar-
beiter und die Ks-ler/^{selbst}benachteiligt hätte, nicht hoch genug
veranschlagt werden. Man hat Fälle genug erlebt, in denen
Führungsgremien durch einen einzigen oktroyierten Nazi-Akti-
visten um jede ausgleichende Wirkungsmöglichkeit gegenüber
den Parteizielen und -methoden gebracht worden sind.

So gibt es neben dem eigentlichen Notstand noch den Gesichts-
punkt der Pflichtenkollision, den das Gericht reiflich erwägen mö-
ge. Für den aussenstehenden Betrachter mochte zunächst der Ein-
druck der Gleichgültigkeit gegenüber den Gemeinheiten des SS-
Staates entstehen. Das Gegenteil ist richtig. Die Lage war eine
einnmalige: Der furchtbare Druck, durch den man die Durchsetzung
selbst der abscheulichsten Staatsziele erzwang, ohne vor der Be-
seitigung der Besten zurückzuschrecken, liess keine Wahl, zumal
nur auf diesen Wege die Möglichkeit bestand, wenigstens manches
Wesentliche zur Abmilderung zu erreichen, so dass gerade der
Verantwortungsbewusste, der weniger an seine eigene Gefährdung
als an seine sittliche Verpflichtung dachte, den Weg der Ange-
klagten gehen musste. Es kommt alles darauf an, ob man die An-
geklagten für Ehrenmänner hält, denen man es in schwerer Zeit
überlassen kannte, den Weg zu gehen, den ihnen ihr Gewissen vor-
schrieb.

Die vertiefte Betrachtung des Verbrechens hat über den
Wortlaut der Gesetze hinaus das Problem enthüllt, das die Moral-
theologie schon seit Jahrhunderten unter dem Stichwort der Wahl
des minus malum behandelt hat, dass die Verwirklichung eines

grösseren Straftatbestandes erlaubt sein kann, wenn dadurch ein anderes schlimmeres Übel verhindert wird.

Der Bonner Strafrechtslehrer, Professor Holnuth v.

W o b e r schreibt in der "Monatsschrift für Deutsches Recht", Jahrgang 2, Heft 2, Februar 1940:

"Das Nürnberger Urteil spricht sich mit Erstaunen, ja mit Entrüstung über den Einwand des Handelns auf Befehl seitens der Angeklagten aus und wirft ihnen Zwiespältigkeit, um nicht zu sagen, Unehrlichkeit vor. "Viele dieser Männer", so führt es aus, "haben mit dem Soldateneid des Gehorsams gegenüber militärischen Befehlen ihren Spott getrieben. Wenn es ihrer Verteidigung zweckfönllich ist, so sagen sie, sie hatten zu gehorchen; hält man ihnen Hitlers brutale Verbrechen vor, deren allgemeine Kenntnis ihnen nachgewiesen wurde, so sagen sie, sie hätten den Gehorsam verweigert". Und doch kann diese Haltung auf einer nicht nur ethisch, sondern auch juristisch zu rechtfertigenden Grundlage beruhen, die man erkennt, wenn man sich in die Situation des Befehlsempfängers versetzt. Nehmen wir an, seine erste Reaktion sei, ohne Rücksicht auf persönliche Gefahr, der Entschluss, die Ausführung des Befehls zu verweigern. Er überlegt weiter, was dann geschieht und er kommt zu der begründeten Ueberzeugung, dass ein anderer an seinen Platz treten werde, der bedenkenlos den Befehl ausführen wird. Und nun entschliesst er sich, in seiner Stellung auszuharren: wenn er auch die Ausführung des Befehls nicht verhindern kann, so kann er sie doch abmildern und das Unheil einschränken. M.a.W.: es ist der Gedanke der Pflichtenkollision, der bei der Wahl zwischen zwei Übeln, dem kleineren, wenn er selbst aktiv mitwirkt, und dem grösseren, wenn er untätig bleibt, ihn das kleinere Übel wählen heisst. Auch hier bleibt ihm keine Wahl, das Unrecht zu vermeiden; er hat nur die Wahl zwischen zwei Übeln, und wenn er dann das kleinere wählt, so verdient er keinen Vorwurf.

An anderer Stelle heisst es, unter gegebenen Umständen müsse man anerkennen, dass oft der grössere moralische Mut zum Ausharren in der Stellung und zur Mitwirkung bei hemmender Befehlsausführung gehört und dass durch diese von verantwortungsbewussten Männern bewiesene Haltung unter nationalsozialistischer Herrschaft viel Unheil verhindert worden ist. Daran darf auch die juristische Bewertung nicht achtlos vorbeigehen. Man darf dem auch nicht entgegenhalten, dass dieses Unheil ganz verhindert worden wäre, wenn alle Untergebenen die Ausführung verweigert hätten. Hier handelt es sich nicht um die Kollektivschuld eines Standes, sondern um individuelle strafrechtliche Verantwortlichkeit, und deren Beurteilung muss von der Tatsache ausgehen, dass die geschlossene Befehlsverweigerung eines Standes eine Illusion gewesen wäre."

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E. Conspiracy : Die Über-
windung des gemeinrecht-
lichen Komplottbegriffes
auf dem Kontinent im 19.
Jahrhundert. Zur bona
fides der Angeklagten.

§ 40. Die Überwindung des Komplottbegriffes auf dem Kontinent.— Die conspiracy angelsächsischen Rechts entspricht genau dem gemeinrechtlichen Komplottbegriff des kontinentalen Rechts, wie er von dem berühmten Kriminalisten Anselm Feuerbach formuliert worden ist. (§ 47 des 1847 von Mittermaier herausgegebenen "Lehrbuch des gemeinen in Deutschland gültigen peinlichen Rechts"):

"Wenn mehrere durch gegenseitiges Versprechen wechselseitiger Hilfe die Begehung eines Verbrechens gemeinschaftlich beschliessen und sich zu gemeinschaftlicher Ausführung desselben verbinden, so ist ein Komplott (societas delinquendi, conjuratio) vorhanden. Da hier der Entschluss jedes Einzelnen bestimmt wird durch die vertragsmässig begründete Erwartung des Beistandes und der Mitwirkung aller übrigen, so ist jeder Mitverbündete, in Ansehung dessen die Erwartung der übrigen bis zu vollendeter Tat fortäuerte, als intellektueller Urheber des vollendeten Verbrechens zu betrachten, wiewohl er sonst keinen tätigen Anteil genommen hat."

Die übliche Begriffsbestimmung des englischen Rechtes lautet:

"When two or more persons agree to commit any crime they are guilty of the misdemeanour called conspiracy whether the crime is committed or not".

Aber die Entwicklung des 19. Jahrhunderts hat im kontinentalen Recht zur Beseitigung des Komplottbegriffes in den modernen Strafgesetzbüchern geführt, weil die Verurteilung aller Konspiratoren in Bausch und Bogen, das Arbeiten mit mehr oder weniger unwiderleglichen Schuldvermutungen, nicht mehr dem heutigen Bedürfnis entspricht, den Einzelnen nur für das verantwortlich zu machen, was er bewusst zum ausgeführten Verbrechen beigetragen hat.

Das führende deutsche Strafrechtslehrbuch von Franz von L i s z t bekämpft deshalb ebenfalls den Komplottbegriff, damit nur die Opposition B e r n e r ' s, der L i s z t ' s Vorgänger auf dem Berliner Lehrstuhl für Strafrecht gewesen ist, fortsetzend, wenn er schreibt: "Die heutige Wissenschaft hält daran fest, dass dem Einzelnen das begangene Verbrechen nur insoweit zugerechnet werden kann, als die Begriffe der Täterschaft, Anstiftung oder Beihilfe im gegebenen Fall tatsächlich durch das Verhalten der Einzelnen verwirklicht worden sind, dass ferner von Versuch nicht gesprochen werden kann, solange kein Anfang der Ausführung vorliegt."

Nur bei der Verfolgung politischer Gegner wegen Hochverrats, bei Sprengstoffattentaten usw. hat die jüngste Entwicklung in Deutschland auf den Komplottgedanken zurückgegriffen.

Die Verwendung des Straftatbestandes der conspiracy widerspricht deshalb den anerkannten Grundsätzen der zivilisierten Nationen. Ich zitiere zum Belege noch je einen Vertreter der Schweiz, Italiens und Frankreichs, wobei die Stimme des letzteren eine umso grössere Bedeutung hat, als es sich um den französischen Hauptrichter des IMT-Verfahrens, Donnedieu d e V a b r e handelt.

Die Schweizer Professoren **T h o r m a n n** und **v o n O v e r b e c k** schreiben in ihrem Kommentar zum "Schweizerisches Strafgesetzbuch", Allgemeiner Teil, Zürich 1940, Seite 120:

"Das Komplott (Verabredung zu einem bestimmten Verbrechen) und die Bande (Vereinigung zu mehreren Verbrechen) sind im Strafgesetzbuch, im Gegensatz zu einzelnen älteren Gesetzen, nicht hervorgehoben und bilden keine besonderen Teilnahmearten (vgl. **H a f t e r**, Allg. Teil 216). Je nach der Struktur des Tatbestandes und dem Grade der Beteiligung, kann Täterschaft, Teilnahme oder blosse Vorbereitung gegeben sein."

Guglielmo S a b a t i n i, Professor des Strafrechts an der Universität Catania, schreibt in "Istituzioni di Diritto Penale", Volume I, Parte Generale, Roma 1935, Seite 319:

"Come di fronte al reato individuale non è punibile il solo proposito di commetterlo, rispetto al reato di più persone non è punibile il solo accordo al fine di commetterlo, se poi il reato non è commesso. Del pari non è punibile la istigazione a commetterlo, anche quando la istigazione sia stata accolta, ma il reato non sia stato commesso, salva che la legge disponga altrimenti, a norma dell'art. 115. Questa riserva si riferisce ai casi in cui il solo accordo o la sola istigazione costituisce per sè reato, quale l'accordo o la istigazione a commettere alcuno dei delitti contro la personalità dello Stato,.....".

§ 41. Die Stellungnahme Donnedieu de Vabre's
und des IMT sowie der späteren Militärgerichte.- Donnedieu de Vabre endlich hat alsbald nach Beendigung seiner richterlichen Tätigkeit in Nürnberg einen Vortrag in Paris gehalten und darin erklärt, dass der Internationale

Militärgerichtshof dem Begriff der "verbrecherischen Organisationen" sehr skeptisch, dem Begriff der Verschwörung gegen den Frieden ablehnend gegenüberstand und deshalb beide Begriffe in grosszügig einschränkender Auslegung - wie Professor Donnedieu de Vabres sich ausdrückte - ihrer Substanz entkleidete. Unter diesen Gründen nennt er auch das Verbot des rückwirkenden Strafgesetzes:

"....Der weitreichende Begriff der Verschwörung oder conspiracy ist dem britischen Recht eigentümlich. Die Anklageschrift fasst unter diesem Ausdruck das gesamte Hitler'sche Unternehmen zusammen, das auf die Macht-ergreifung und den Angriffskrieg abzielte. Die Anklageerhebung wegen solcher Tatbestände birgt die Gefahr in sich, dass damit der Willkür Tür und Tor geöffnet werden. Anklage wegen Verschwörung ist die Lieblingswaffe der Tyrannei. Wenn Hitler seine politischen Gegner beseitigen wollte, beschuldigte er sie, sich gegen ihn verschworen zu haben.

Schliesslich ist sie (die conspiracy) auch dem Völkerrecht ebenso unbekannt, wie dem internen Recht der meisten Staaten. Man konnte sie nur vertreten und geltend machen, indem man sowohl den Geist als auch den Buchstaben nach den Grundsatz der Legalität der Verbrechen und Strafen verletzte."

Dahingemäss hat der Gerichtshof, um mit den Worten von Professor Donnedieu de Vabre weiterzusprechen, davon Abstand genommen, aus dem Begriff der Verschwörung praktische Folgerungen zu ziehen:

"Die Verschwörung wird zum Begriff eines aufeinander abgestimmten Plans zur Begehung irgend einer klar unrisiken Angriffshandlung eingeschränkt und dadurch mit dem Begriff, sogar einen sehr engen Begriff der Komplizenschaft gleichgesetzt."

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Wegen dieser Komplizenschaft hat der Internationale Militärgerichtshof dann nur acht der engsten Mitarbeiter Hitlers von den 22 Angeklagten verurteilt.

In den dem IMT folgenden Nürnberger Prozessen hat die Prosecution dann Anklage wegen Verschwörung gegen die Menschlichkeit und zur Begehung von Kriegsverbrechen erhoben. Hier ist sie jedoch durch eine Plenarentscheidung der in Betracht kommenden Gerichtshöfe abgewiesen worden. In dieser wurde entschieden, dass das Gesetz Nr. 10 derartige Verbrechen nicht kennt.

§ 42. Zur Frage des Vorsatzes der Angeklagten. Auseinandersetzung mit dem von der Anklagebehörde angezogenen Fall. - So ist der Straftatbestand der conspiracy kein von allen zivilisierten Nationen anerkanntes, also in allgemeinen Völkerrecht nicht enthaltenes Delikt und schon aus diesen Grunde als ex post facto normiert keine rechtsgültige Grundlage für eine Verurteilung der Angeklagten. Aber auch in der massvollen Weise, in der das IMT die conspiracy zu einer Beihilfe an konkreten Angriffshandlungen abgeschwächt hat, setzt sie die Kenntnis von den Plänen des Haupttäters Hitler voraus. Selbst bei Zugrundelegung des amerikanischen Verschwörungsbegriffes aber könnte die leitenden Herren der I.G. der Vorwurf der vorsätzlichen Mitwirkung an der Vorbereitung eines Angriffskrieges nicht treffen. Zweifellos ist der von der Anklage zum Beweis ihrer These herangezogene Fall, *Direct Sales Corporation v. United States* 319 U.S. 703, geschickt ausgewählt. Doch er trifft den Kern der Sache nicht. In diesem Falle wurde einer Postversandfirma für medizinische Artikel nachgewiesen, dass sie einem Arzt in einer Kleinstadt durch die Post Morphin

Sulfat, ein Narkotikum, bis zu 6.000 Tabletten pro Monat verkauft hatte. Alles dies geschah auf dem Wege des Postversandes. Eine persönliche Fühlungnahme zwischen der Gesellschaft und dem Arzt fand nicht statt. Der Arzt und andere Personen wurden wegen Verschwörung, den Harrison Narcotic Act verletzt zu haben, verurteilt. Der Supreme Court hielt die Verurteilung der Firma mit der Begründung aufrecht, dass trotz des Vorliegens an sich legaler Verkäufe durch das Bewusstsein der Firma, dass der Arzt die Narkotika illegal vertreiben werde, die Voraussetzung der Verschwörung erfüllt sei. Die Parallele zu unserem Fall sieht die Anklagebehörde insbesondere in den folgenden Sätzen der zitierten Entscheidung:

"Die hier verkauften Güter waren Gegenstände des freien Handels.... Ihr Verkauf war nicht durch Bestellformulare, Registrierungen oder andere Erfordernisse beschränkt. Wenn sie (die Narkotika) aus der Hand des Verkäufers in die des Käufers übergingen, waren sie per se Beschränkungen unterliegende Waren, von denen legal nur Gebrauch gemacht werden konnte, wenn man sich an die strengen Bestimmungen hielt, wie sie für Morphiumsulfat galten. Der Unterschied ist wie der zwischen Knallbüchsen und Jagdmaschinengewehren. Alle Handelswaren können für illegale Zwecke verwendet werden. Aber in ihnen liegt nicht in gleichen Masse das Gefahrenmoment einer schadenbringenden und illegalen Verwendung. Gleichfalls besitzen auch nicht alle ihrer Natur nach dieselbe Fähigkeit, den Verkäufer zu warnen, dass der Käufer sie illegal verwenden wird. Der private Markt für Maschinengewehre ist bei Gangstern zu finden, nicht bei Jägern oder kleinen Buben! So stellen die

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Rauschgiftkohligen den normalen Absatzmarkt für Morphium dar, das ausserhalb des gesetzlichen Handelsweges zu haben ist."

Aber sind die beiden Sachverhalte wirklich vergleichbar? Dass der Arzt einer kleinen Stadt, wenn er laufend abnorme Mengen Narkotika bezieht, diese mit allergrösster Wahrscheinlichkeit in illegaler Weise absetzt, ist ein sehr einleuchtender Schluss. Der Fall der deutschen Wiederaufrüstung liegt anders. Deutschland hatte sich durch den Versailler Vertrag zur Abrüstung verpflichtet, aber unter der Bedingung, dass auch die anderen Grossmächte alsbald abrüsten würden. Diese aber hatten in der Zeit von 1919 bis 1933 nicht nur nicht abgerüstet, sondern erheblich aufgerüstet.

§ 43. Das Zeugnis Lloyd Georges. - Als glaubwürdigen Zeugen für diesen Sachverhalt zitiere ich Mr. Lloyd George, den britischen Premier des ersten Weltkrieges und Mitunterzeichner des Versailler Vertrages: In seiner grossen Rede vor dem Londoner Aldwych Club am 7.12.1927 erklärte Lloyd George:

"Ich habe das Dokument vor mir, das die Repräsentanten der Alliierten an Deutschland sandten, bevor der Vertrag unterzeichnet wurde. Bitte hören Sie folgendes, die militärische Klausel: Die alliierten und verbündeten Mächte wünschen klarzumachen, dass ihre Forderung in Bezug auf die deutsche Entwaffnung nicht allein mit der Absicht gestellt wurde, es für Deutschland unmöglich zu machen, die Politik des militärischen Angriffes wieder aufzunehmen. Sie bedeuten auch die ersten Schritte zu einer allgemeinen Reduktion und Begrenzung der Bewaffnung, welche die Alliierten als eines der besten Vorbeugungsmittel künftiger Kriege zustandebringen wollen und dessen Durchführung eine der ersten Pflichten des Völkerbundes darstellt. Das ist ein Zitat aus dem Dokument, das wir als die heilige Verpflichtung Britanniens, Frankreichs,

Italiens, Belgiens und zwanzig anderer Nationen Deutschland übergaben, dass, wenn Deutschland entwaffnet sei, wir seinen Beispiel folgen würden. Heisst das, falsche Hoffnungen erwecken? Wenn es das wirklich bedeutete, so ist es keine Hoffnung, die ich in einer kleinen Rede bei einer Völkerbundsversammlung erweckt habe, sondern dann ist es eine Hoffnung, welche die grössten Nationen der Welt durch ihre Repräsentativen signiert und versiegelt an Deutschland abgegeben haben. Kann man das leugnen? Wie liegen die Tatsachen? Ich gebe sie und fordere jeden auf, ihnen zu widersprechen. Es sind so wichtige Tatsachen für den Frieden der Welt, und der Friede der Welt ist so wichtig für die Zivilisation, dass ich sie wiederholen will. Ich sagte, dass die Siegerstaaten im Weltkrieg mit Einschluss der Nationen, welche beitraten, als wir ganz sicher waren, zu siegen, gegenwärtig in ganzen über zehn Millionen Mann unter den Waffen haben, die nicht nur gut, sondern für den Krieg besser ausgerüstet sind, als sie es im Jahre 1914 waren. Die Maschinerie ist vollkommener. Mit vollkommenen meine ich entsetzlicher als irgend etwas, das die Welt im vergangenen Krieg gesehen hat, und es wird von Jahr zu Jahr furchtbarer. Die besten Köpfe beschäftigen sich mit Maschinen, nicht nur, um die Armeen, sondern um wehrlose Bürger anzugreifen.

Ich sagte, zehn Millionen, aber ich habe die Zahl unterschätzt. Wir haben Deutschland, Österreich-Ungarn und Bulgarien entwaffnet. Dann sagten wir:

"Sobald Ihr abgerüstet habt, werden wir Euren Beispiel folgen".

"Die genannten Staaten haben alle zusammen ungefähr zwei-

oder dreihunderttausend Soldaten, die nicht sehr gut ausgerüstet sind, und die anderen Länder haben immer noch zehn Millionen. Sie haben die Millionen nicht um eine einzige Division, nicht um ein Flugzeuggeschwader, nicht um eine einzige Batterie verringert. Ich behaupte noch immer, dass es eine Schande für die feierliche Versicherung ist, die wir vor den Deutschen und anderen, welche den Vertrag von Versailles unterschrieben haben, abgaben. Das ist der Tadel, den ich verteile und den ich aufrechterhalte."

(aus: D. Lloyd George "Gedanken eines Staatsmannes", herausgegeben von Philipp Guedalla, übertragen von Dr. Anton Mayer, Berlin 1929, S.143 bis 145.)
Derselbe britische Staatsmann erklärte in einer Rede in Plymouth am 29.9.1933:

"I was a member of the committee appointed by the Prime Minister in 1931 to consider disarmament. On that committee the leaders of the three parties were represented. If the recommendations made, had been carried out promptly and courageously, there would have been no trouble in Germany today- We unanimously decided to advise that Germany's claim to equal status in the matter of arms should be practically conceded. That, of course, was the purpose of the Treaty of Versailles.

If those pledges had been carried out, there would have been no trouble in Germany to-day. All the trouble that has arisen in Europe has come from a flagrant breach of the undertaking to disarm by all the victors except one. Germany disarmed and Britain followed. Every other signatory refused.

Their armaments are more powerful to-day than they were in 1914, and amongst these countries are not only France but the United States of America. For fourteen years there had been a great show and sham of working our schemes of

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general disarmament, but nothing had been accomplished. No heed had been paid to the warnings of men of pacific temperament like Stresemann and Brüning that a party would arise in Germany demanding rearmament unless we kept faith. No heed was paid to these warnings. No the slightest effort was made to keep faith. The failure has destroyed the normal influence of the League."
(Aus: The Manchester Guardian Weekly, September 29, 1933.)

Bereits die Regierung Brüning hatte keinen Zweifel darüber gelassen, dass wenn die Westmächte nicht alsbald mit der Abrüstung Ernst machen würden, Deutschland sich nicht weiter für gebunden erachten werde und gezwungen sei, seinerseits aufzurüsten. Auch bei den Verhandlungen der Abrüstungskonferenz im Jahre 1933 waren die Zugeständnisse der Westmächte nach Ansicht der deutschen Regierung ungenügend. Deutschland verliess daher im Herbst 1933 die Abrüstungskonferenz und den Völkerbund und rüstete seinerseits auf. Dass die deutsche Aufrüstung auch von Ausland anerkannt wurde, beweist das deutsch-englische Flottenabkommen von 1935, in dem das Verhältnis der englischen zur deutschen Flotte mit 100:35 festgelegt wurde.

§ 44. Die Höhe der deutschen Aufrüstung wird überschätzt. Die Feststellungen Burton Klein's. - Was nun die Höhe der deutschen Aufrüstung anlangt, so wird dabei von der Anklagebehörde übersehen, dass Deutschland durch seine Aufrüstung nicht nur den durch die 1919 erfolgte totale Abrüstung entstandenen Vorsprung der Alliierten auszugleichen hatte, sondern auch denjenigen Teil der Rüstung, der in der Zeit von 1919 bis 1933 bei den Alliierten hinzugekommen war. Dass insbesondere der französische Rüstungs-
etat ebenso wie der russische, polnische und tschechische in dieser Zeit ausserordentlich hoch gewesen sind, ist eine
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bekannte Tatsache. Nur die englische Rüstung hielt sich in mässigen Grenzen. Ganz abgesehen davon, dass das Mass der erforderlichen Rüstung eine Sache der hohen Politik ist, das in jedem Land mehr oder weniger der Initiative der Regierung überlassen bleibt, muss mit allen Nachdruck festgestellt werden, dass die deutsche Rüstung in der Zeit von 1933 bis 1939 nicht als ausser Verhältnis zu den deutschen Bedürfnissen in einem etwaigen Verteidigungskrieg stehend angesehen werden kann. Ja, es ist festzustellen, dass nur eine einzige Grossmacht auf der Gegenseite genügt hätte, um die deutschen Rüstungsanstrengungen zu paralysieren. Soeben ist in "The American Economic Review (Volume XXXVIII, März 1948, Nr.1) der Aufsatz des Carnegie Stipendiaten an der Harvard Universität, Burton Klein über "Germany's Preparation for War: A Re-Examination" erschienen, in dem der Verfasser nachweist, dass man sich aufgrund der Prahlereien Hitlers in alliierten Kreisen von der deutschen Aufrüstung ganz übertriebene Vorstellungen gemacht hat.

Der Verfasser schreibt:

"Nearly all the economic and political studies of prewar Germany agreed on three major propositions. These were: (1) that in the period before 1939 Germany had succeeded in building up a military machine whose comparative strength was enormous; (2) that practically all of the increase in production from the low level of the depression was diverted into the construction of a huge war potential; (3) that all economic considerations were subordi-

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nated to the central task of preparing for war.

Even a cursory examination of the official German data recently made available shows that the validity of these propositions is questionable."

"Most discussions of Germany's war preparations begin with Hitler's boast that the nazis had spent 90 billion RM on rearmament."

"Actually, according to our definition, 51 billions were spent on rearmament in the six fiscal years ending March 31, 1939, and about 55 billions up to the outbreak of war.¹⁾

This corresponds to a little less than 50 per cent of total public expenditures for goods and services, and about 10 per cent of the gross national product produced during this six-year period."

"It is convenient to divide the discussion of rearmament into two periods."

"....Up to the time of the German reoccupation of the Rhineland in the spring of 1936, rearmament was largely a myth. In the three years ending March 31, 1936, some 11 billion RM were spent;"

"The second phase of German rearmament began in the summer of 1936 when Hitler decided to start rearming on an intensive scale. Undoubtedly this decision was influenced by German intelligence reports which placed the strength of

¹⁾ Eine einzige Vergleichszahl sei angeführt:
Der amerikanische Wehretat sieht für das Jahr 1948 19 Milliarden Dollar, also in einem Jahr über 50 Milliarden RM vor.

the Russian army at nearly one million. Such "Bolshevist" superiority was greatly feared ¹⁾, and preparations were begun under the Second Four-Year Plan to assure German dominance of Europe."

"In the three fiscal years ending March 31, 1939, Germany spent 40 billion RM for rearmament. In 1938-39, the past peacetime year, military expenditure amounted to 16 billion marks, a sum equivalent to 15 per cent of Germany's gross national product. Actually, the share of the German national output going for armaments was not much higher than that of the Allies prior to their entry into the war. Total British war expenditures in 1939 constituted nearly 15 per cent of her gross national product, and were only slightly less than Germany's. In 1941, the year before the United States went to war, the war expenditure ratio was about 10 per cent - and would imply a higher absolute volume of armament expenditures than Germany's."

"The nazis placed heavy emphasis on the importance of air power, allocating nearly one-half of prewar military ex-

1) Anmerkung des Verteidigers:

Im Jahre 1936 ratifizierte Frankreich entgegen Deutschlands wiederholten Vorstellungen den sogenannten Ostpakt mit Sowjet-Russland, den die deutsche Regierung als Verletzung des Locarno-Abkommens ansah. Wie der Sprecher der französischen Kammer aus diesem Anlass mitteilte, hatten die Besprechungen der beiden Generalstäbe ergeben, dass Russland in diesem Augenblick als die stärkste Macht auf dem Kontinent anzusehen war. Um die psychologische Situation in Deutschland zu verstehen, muss man sich vergegenwärtigen, dass es schon einmal Frankreich gewesen war, das, um seine Erwerbungen im Elsass und in der Pfalz zu sichern, die Türken zum Einfall nach Mitteleuropa bewogen hatte, die damals in der Absicht, ein osmanisches Westreich zu gründen, sogar Wien belagerten, das erst im letzten Augenblick von den kaiserlichen Truppen und Freiwilligen aus dem ganzen Abendlande entsetzt werden konnte, ein Ereignis, das über die von den Türken eroberten Gebiete namenloses Elend für ein Jahrhundert brachte. Auch warnten ./ die Erfahrungen von 1914.

penditures to the Luftwaffe. A large air craft output was therefore to be expected. Total monthly aircraft production rose from 30 in 1933 to 425 in 1936 and remained at this level through 1938. In 1939, total output rose by 60 per cent. At the outbreak of war, output of combat types was 500 a month, 60 per cent of the production rate credited to Germany by British Intelligence. Germany entered the war with an air force of 1.000 bombers, and 1.050 fighters, which was still not an inconsiderable number compared to the air of her enemies.

Before 1938 Germany produced only the very light Mark I and Mark II tank-types which were outmoded soon after the beginning of the war. Production of the Mark III began in 1938, and the Mark IV, in 1939. In the last three months of 1939 Germany produced 247 tanks, and 45 per cent of the Intelligence estimate of German production."

Daraus aber ergibt sich eindeutig, dass gerade der Fachmann, selbst bei günstigem Ansatz der deutschen Erzeugung, sich sagen musste, dass ein Krieg gegen eine Koalition, der auch nur eine der drei Grossmächte: Russland, England oder USA angehören würde, eine Wahnsinnstat wäre. Auch musste sich jeder sagen, dass wenn es zu einer kriegerischen Verwicklung mit einem deutschen Nachbarstaat kommen würde, die Grossmächte oder mindestens eine davon auf der Gegenseite zu Felde ziehen würden.

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F. Prozessualo Fragen.

§ 45. Die Bagatellisierung der Verfahrensfragen durch die Ordinance Nr. 7 - ein Rechtsmissbrauch. - Angesichts dieser Rechtslage braucht nicht näher darauf eingegangen zu werden, ob die Nürnberger Prozesse, wie sie jetzt abrollen, ohne Garantie für ihre Besetzung,¹⁾ ohne in sich geschlossene Verfahrensordnung - die Ordinance Nr. 7 fasst vielmehr in sorglosen Eklektizismus aus allen Prinzipien die für die Anklage bequemsten Sätze zusammen - nicht schon deshalb der Rechtsgrundlage entbehren, weil hier eine military commission zu hoch politischen Vergeltungsprozessen missbraucht wird. Nach dem Sinn der military commission soll sie zur Aufrechterhaltung der Disziplin, der Ruhe und Ordnung in dem besetzten Lande tätig sein. Deshalb ist sie Hilfsorgan des militärischen Befehlshabers, kein Teil des amerikanischen Justizsystems, mehr der Executive zugehörig als der Justiz.

Können Prozesse wie der in Frage stehende durch eine military commission erledigt werden? Müssen Prozesse von solcher politischer Bedeutung nicht mit allen Rechtsgarantien umkleidet werden, die sich überhaupt denken lassen? Es ist ein alter Grundsatz der rechten internationalen Justiz, dass die Verfahrensfragen besonders ernst genommen werden. Handelt es sich doch beim Zusammenwirken von Juristen aus verschiedenen Ländern in einem Verfahren immer um ein Aufeinanderprallen verschiedener Justizsysteme in einem Prozess, und dadurch gewinnen die Prozessfragen eine Bedeutung, wie sie sie im nationalen Bereich nicht haben. So ist auch hier bald das anglo-amerikanische Beweisystem, bald die freie Beweiswürdigung kontinentaler ~~Präzedenz~~ miteinander kombiniert und es entstehen dabei Gesamtergebnisse, wie sie in keinem Kulturrecht vertreten werden. Denn entweder ist man bei der Präsentation der Beweisdokumente so formell, wie es das angelsächsische

1) vgl. die eingangs zitierte Motion
vom 5. Mai 1948.

Recht vorschreibt, dann bedarf es aber auch der anglosächsischen Regeln für die Auswertung des Beweismaterials, die in einem ganz anderen Sinne formalisiert sind als im kontinentalen Recht. Oder aber man verzichtet auf Hearsayrule, Konfrontationsanspruch, Verbot erzwungener Selbstbesichtigung, dann muss man aber auch in der Art des kontinentalen Rechtes in der Zulassung von Beweismitteln (Fragen an die Zeugen, Dokumente und Urkunden) weniger formell sein. Das jetzige *mixtum compositum* bedeutet eine Abwertung der prozessualen Fragen, das der Bedeutung der zu entscheidenden Tat- und Rechtsfragen nicht gerecht zu werden und daher untragbar ist. Auch die Prinzipien der Mündlichkeit und Schriftlichkeit, der Unmittelbarkeit und Mittelbarkeit - man denke nur daran, dass der Commissioner gleichzeitig mit dem Hauptgericht Vernehmungen durchführt - sind in untragbarer Weise miteinander kombiniert. Die Inkongruenz zwischen den prozessualen Mitteln und der zu bewältigenden Aufgabe ist so augenfällig, dass bei der Einrichtung dieser Gerichte eine missbräuchliche Ausübung der Verordnungsgewalt des Militärbefehlshabers festzustellen ist.

§ 46. Die Mängel des konkreten Verfahrens. - Es ist nicht damit getan, dass der Prozess ein Jahr dauert. Dass ein Hochhaus nicht in der gleichen Zeit gebaut werden kann wie eine Gartenlaube, liegt auf der Hand. Man muss, wenn man den wahren Gerechtigkeitsgehalt eines *Procedere* feststellen will, nicht nur auf den äusseren Apparat, die beteiligten Personen, Rechtsanwälte, Zeugen abstellen, nicht bloss die Länge der Beweisaufnahme in die Waagschale werfen, sondern man muss dieses äussere Aufgebot in Beziehung setzen zu der Grösse des Prozessstoffes. Hier liegt die

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Diskrepanz, die die Verteidigung immer wieder mit Schrecken erfüllt. Der Verteidiger hat das Gefühl, in einem Blitzzug zu sitzen, an dessen Fenstern die wichtigen Stationen unwiederbringlich vorbeijagen. Dazu kommt, dass das allgemeine Übergewicht der Anklagebehörde als Teil der Militärregierung in einem besetzten und völlig niedergebrochenen Land die Lage der Verteidigung weithin zu einer aussichtslosen macht.

Es sei an die zahlreichen Motions und Objections erinnert, in denen die Verteidigung ihre schwierige Lage dem Gericht darstellte, insbesondere ihren Beweisnotstand, der angesichts der rücksichtslos ausgenutzten Vorteile der Staatsanwaltschaft bei der Beweisbeschaffung nur umso krasser in Erscheinung getreten ist. Diese verfügte über ein riesiges Reservoir politisch inhaftierter Personen als Zeugen und von Anfang an über alle aus den beschlagnahmten Fabriken und Privatwohnungen der Angeklagten zusammengebrachten Dokumente, die sie seit Jahren ungestört bearbeiten konnte. Auch standen ihr durch die Gesetzgebung über die Auskunftspflicht aller Deutschen gegenüber den Besatzungsmächten, über die Möglichkeit der Sicherstellung von Zeugen durch ihre Festnahme, über die Entnazifizierung Möglichkeiten bei der Vernehmung zu Gebote, die völlig irregulär sind und mindestens in manchen Fällen zu einer der Wahrheitsfindung abträglichen Verangstigung der Zeugen geführt haben. Ich denke ferner an die während der ersten Prozesshälfte umfassende Postzensur, an die Beschlagnahme des Vermögens der Angeklagten, ihrer Ehefrauen und Kinder, an die Überlegenheit der Anklagebehörde bei der

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Information der Öffentlichkeit. Dadurch hatte sie ein völlig anomales Übergewicht über die Verteidigung, die noch dazu in einem ihr nicht vertrauten ausländischen Prozessrecht tätig war und wie alle Deutschen unter ungewöhnlich schwierigen äusseren Lebens- und Arbeitsbedingungen stand. Diese Ungleichheit der Waffen ist gerade im amerikanischen Strafverfahren, das die Rolle des Richters in der Verhandlung auf die Entgegennahme des Beweisvortrages beider Parteien beschränkt, auch bei objektiver Verhandlungsführung durch dieses Gericht nicht zu beseitigen. Umso empfindlicher ist die Verteidigung gegenüber allen vermeidbaren Erschwerissen. Der Anzilotti-Schüler *Vodovato* hat in "Diritto internazionale bellico", S.288, zur Kritik des Verfahrens im ersten Nürnberger Prozess die Mängel des Verfahrens besonders hervorgehoben; seinen Ausführungen ist nichts hinzuzufügen. Er schreibt:

"La formalità ed il pieno rispetto della formalità della legge, cioè della legalità, sono le uniche garanzie, universali ed eterne, contro gli arbitri particolari o le impulsività politiche contingenti: quando in un atto internazionale istitutivo d'una corte di giustizia si parte dalla promessa che il tribunale debba render giustizia attraverso un "prompt trial" (II,1), si prescrive che esso sia tenuto a limitare il dibattito a un "expeditious hearing of the issues" (II, 18 (a)), o che "sciolto da qualsiasi regola assoluta", debba adottare ed applicare "to the greatest possible extent expeditious and nontechnical procedure" (II,19), chi della giustizia o della legge è pensoso non può non dubitare della legittimità della repressione."

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Die Fürsichtigkeit und der volle Respekt vor der Fürsichtigkeit des Gesetzes, d.h. vor der Legalität sind die einzigen Garantien von universaler und ewiger Bedeutung gegen etwaige Willkür des Einzelnen und seine politische Impulsivität. Wenn in einem internationalen Akt, der einen Gerichtshof einrichtet, davon ausgegangen wird, dass das Gericht mit Hilfe eines "prompt-trial" Recht sprechen soll, wenn vorgeschrieben wird, dass dieses Gericht gehalten ist, die Debatte zu beschränken auf ein expeditious hearing of the issues (II,18 (a)) und dass es unter Beiseitelassung jedweder absoluten Regel annehmen und anwenden soll to the greatest possible extent expeditious and nontechnical procedure, dann kann derjenige, der an die Gerechtigkeit und das Gesetz denkt, nicht umhin, die Rechtsgültigkeit des Strafprozesses in Zweifel zu ziehen.

Nürnberg, den 21. Mai 1948.

Professor Dr. Eduard Wahl

(Professor Dr. Eduard Wahl)
Special Counsel For All Defendants

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Roll 101

Target 4

Defense Brief on Dynamit Aktiengesellschaft

(German)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Case 6
Defense

MILITÄRGERICHTSHOF NR. VI

FILE Nr. 6

D. A. G. -

SCHLUSSBRIEF

fuer die Gesamtverteidigung
vorgelegt von
Hanns Gierlichs und
Carl Weyer.

Gegen



In der Behandlung des Anteils des I.G. Konzerns an den deutschen Ruestungsmassnahmen beschaeftigt sich die Anklagebehörde besonders eingehend mit der Dynamit-Actien-Gesellschaft (D.-G.) und deren Verhaeltnis zur I.G.. In Uebereinstimmung mit der Vorlage des Beweismaterials der Verteidigung, die das hierher gehoerige Entlastungsmaterial in drei D.-G. Dokumentenbuechern sowie einer Ergaenzung zusammengestellt und als allgemeine Verteidigungsbeweisstuecke eingefuehrt hat, wird dieser Fragenkomplex in einem selbstaendigen Schlussbrief behandelt. Die Darlegungen sind nach den folgenden Gesichtspunkten gegliedert:

1. Die Vorgeschichte des Interessengemeinschaftsvertrages I.G. - D.-G. und die kapitalmaessigen Beziehungen zwischen der I.G. und der D.-G., Seite 2 - 4.
2. Die praktische Gestaltung des Verhaeltnisses der D.-G. zur I.G., Seite 5 - 20 a.
3. Die Unterrichtung der I.G. und insbesondere der Angeklagten Schmitz und Gajewski ueber die Taetigkeit der D.-G. auf dem Ruestungsgebiet, , Seite 21 - 33.
4. Die Betaetigung der Gesellschaft m.b.H. zur Verwertung chemischer Erzeugnisse (Verwertchemie) auf dem Ruestungsgebiet, ihr Verhaeltnis zum Reich (Verwertungsgesellschaft fuer Montanindustrie m. b. H.), zur D.-G. und zur I.G., Seite 34 - 39.
5. Die Unterrichtung der I.G. und insbesondere der Angeklagten Schmitz und Gajowski ueber die Taetigkeit der Verwertchemie, Seite 40 - 52.

6. Die Rolle des D.L.G.-Konzerns im Rahmen der deutschen Pulver- und Sprengstoffproduktion und das Verhaeltnis der Produktion des D.L.G.-Konzerns fuer militaerische Zwecke zu der Erzeugung fuer zivile Zwecke, Seite 53 - 56.
7. Das Verhaeltnis der I.G. zu den Firmen Wasag und Wolff & Co. sowie zu deren Tochtergesellschaften Sprengchemie und Eibia, Seite 57 - 60.
8. Auch die vollstaendige Kenntnis der Produktionsverhaeltnisse auf dem Pulver- und Sprengstoffgebiet wurde keine Rueckschluesse auf Angriffsplaene der Regierung zugelassen haben, da der Stand der Ruestung auf diesem Gebiet objektiv fuer eine moderne Kriegsfuehrung voellig unzureichend war, Seite 61 - 66.
9. Aus rechtlichen und tatsaechlichen Gruenden haette fuer die I.G. und insbesondere fuer die Angeklagten Schnitz und Gajewski keine Moeglichkeit bestanden, in die Betaetigung der D.L.G. und mehr noch der Verwertchemie auf dem Ruestungsgebiet einzugreifen., Seite 67 - 71.
10. Der Vorwurf der Anklage, der I.G.-Konzern habe bewusst auf eine Schwaechung des Kriegspotentials der voraussichtlichen Gegner Deutschlands hingearbeitet, entbehrt fuer das Pulver- und Sprengstoffgebiet jeder Grundlage, Seite 72 - 75.
 1. Die Vorgeschichte des Interessengemeinschaftsvertrages I.G. - D.L.G. und die kapitalmaessigen Beziehungen zwischen der I.G. und der D.L.G.

Die Anklagebehoerde vertritt unter Berufung auf die eidesstaetliche Erklaerung von Dr. Struss (Bew. 325, NI-8313, Buch 33,) die Auffassung, dass die hervorragende Stellung der I.G. auf dem

Stickstoffgebiet die D.L.G. veranlasst haette, im Jahre 1926 den Interessengemeinschaftsvertrag mit der I.G. abzuschliessen (siehe Prel. Mem. Brief der Anklagebehoerde Teil I, S. 29). Diese Auffassung des Zeugen Struss, der an den Verhandlungen weder direkt noch mittelbar beteiligt war, und der auch keinerlei Beweis fuer seine Annahme erbracht hat, ist zunaechst in sich nicht zwingend; denn es gab einerseits auch andere bedeutende Stickstoffherzeuger in Deutschland (siehe hierzu Oster Bew. 1 u. 2, Oster Dok. 1 u. 2, Oster Dok.Buch I, S. 1 u. 3); andererseits hat die fuehrende Stellung der I.G. auf dem Stickstoffgebiet keineswegs dazu gefuehrt, dass auch die uebrigen deutschen Verbraucher von Stickstoff saemtlich in eine engere organisatorische Verbindung zur I.G. traten, ganz abgesehen davon, dass es in Anbetracht der volkswirtschaftlichen Bedeutung des von der D.L.G. hergestellten Sprengstoffs fuer den Bergbau voellig unmoeglich gewesen waere, dass die I.G. der D.L.G. die Lieferung der entsprechenden Vorprodukte gesperrt haette.

Die wirklichen Gruende fuer den Abschluss des Interessengemeinschaftsvertrages hat der Zeuge Dr. Schmidt, der bereits seit 1915 Vorstandsmitglied der D.L.G. war und diese Eigenschaft ununterbrochen bis Mitte 1946 - ab November 1945 kraft Auftrags des englischen Kontrolloffiziers - beibehielt, in seiner eidesstattlichen Erklaerung vom 1.12.1947 (Vert.Bew. 1, D.L.G. Dok. 1, D.L.G. Dok.Buch 1, S. 1) ausfuehrlich geschildert. Der Anschluss an die I.G. war danach eine natuerliche Folge der Verhaeltnisse nach dem ersten Weltkrieg, um eine klare Trennung der Arbeitsgebiete beider Unternehmungen herbeizufuehren, nachdem die D.L.G. und die im Generalkartell mit ihr zusammengeschlossenen Gesellschaften infolge der Stillegung ihrer fruheren

Produktionen gezwungen gewesen waren, Erzeugungen aufzunehmen, die sie in Konkurrenz mit der I.G. brachten. In der Tat wurden nach Abschluss des Interessengemeinschaftsvertrages die beiderseitigen Fabrikationsgebiete klar von einander abgegrenzt und zwar dahingehend, dass der D.G.-Konzern sich auf die Erzeugung von Spreng- und Zuendmitteln, Jagd- und Sportmunition, sowie Celluloid und Kunststoffen beschränkte und andere inzwischen aufgenommene Produkte, wie Kunstfasern und Film, an die I.G. abgab, wohingegen die I.G. auf jede Erzeugung auf dem Pulver- und Sprengstoffgebiet verzichtete, und die damals noch in Betrieb befindlichen verhältnismässig kleinen Schwarz-Pulveranlagen der früheren Koeln-Rottweil A.G., die durch die Fusion zu I.G.-Fabriken geworden waren, an die D.G. verpachtete. Der Pulverteil des I.G.-Werkes Rottweil blieb, da er sich rasumlich nicht abtrennen liess, bei der I.G., arbeitete insoweit aber praktisch als Lohnbetrieb fuer die D.G. (siehe eidesstattliche Erklaerung Dr. Heinrich Fink, Gajewski Bew. 12, Gajewski Dok. 50, Gajewski Dok.Buch III, S. 32).

Was die kapitalmaessige Beteiligung der I.G. an der D.G. angeht, so besteht offenbar zwischen der Anklagebehoerde und der Verteidigung Uebereinstimmung dahingehend, dass kapitalmaessig diese Beteiligung nicht ganz 50 % des Gesamtkapitals ausmachte, dass jedoch durch die in den Haenden der I.G. befindlichen Vorzugsaktien stimmrechtsmaessig die einfache Majoritaet im Besitze der I.G. war, nicht dagegen die qualifizierte Mehrheit, wie sie im deutschen Aktienrecht fuer zahlreiche Beschlussfassungen (z.B. die im Interessengemeinschaftsvertrag vorgesehene Fusionsmoeglichkeit) vorgeschrieben ist.

2. Die praktische Gestaltung des Verhaeltnisses

der D.G. zur I.G..

Aufgrund eines bei Abschluss des Interessengemeinschaftsvertrages getroffenen Gentlemen Agreements zwischen Geheimrat Bosch, dem Angeklagten Schmitz und dem Generaldirektor der D.G. Dr. Paul Mueller sollte der Abschluss des Interessengemeinschaftsvertrages die D.G. in der selbstaendigen und unabhængigen Fuehrung ihrer Geschaefts nicht beeintræchtigen (s. hierzu Aussage Gajewski am 2.3.1948; engl. Prot.-S. 8221, deutsche Prot.-S. 8293; ferner Bew. 334, NI-5187, Buch 12, engl. Seite 126, deutsche Seite 107).

Dieses ist auch im Par. 1 des Interessengemeinschaftsvertrages (Bew. 17, NI-5827, Buch 2, engl. Seite 56, deutsche Seite 44) ausdruecklich niedergelegt, da dort klargestellt ist, dass die aktienrechtliche Verantwortung der Verwaltungsorgane der D.G. durch den Interessengemeinschaftsvertrag nicht beruehrt wird, und dass die Zustimmung der I.G. nur zu solchen geschaeftlichen Massnahmen, die ueber den Rahmen des normalen Geschaeftsbetriebes hinausgehen, benoetigt wurde. (Dass auch diese letztere Regelung in der praktischen Handhabung im weiteren Verlauf in steigendem Masse nicht befolgt wurde, und dass sie fuer Militaria ueberhaupt keine Anwendung fand, ergibt sich aus den Seiten 12/ 13 dieses Schlussbriefs.

Als im Jahre 1929 die technische Organisation der I.G. neben der bisherigen regionalen Aufgliederung nach Betriebsgemeinschaften durch eine fachliche Aufgliederung nach Produktionsgruppen durch Bildung der drei Sparten ergaenzt wurde und dabei

Generell die wichtigeren Konzerngesellschaften in dieses Organisationsschema eingepasst werden mussten, wurde die D.G. der Sparte III angegliedert. Dies geschah auf Veranlassung von Geheimrat Bosch und zwar offenbar deswegen, weil es sich sowohl bei den Produkten der Sparte III der I.G. (Photo, Zellwolle, Kunstseide) als auch bei der Produktion der D.G. grosstenteils um Produkte handelte, deren Basis im wesentlichen die Zellulose war.

(Siehe Aussage Dr. Gajewski am 2.3.1948, engl. Prot.-S. 8220, deutsche Prot.-S. 8292).

Diese Angliederung der D.G. an die Sparte III der I.G. hatte, wie sich auch aus eigenen Beweisstücken der Anklagebehörde ergibt, praktisch nur formellen Charakter. Wie der Zeuge Struss in seiner eidesstattlichen Erklärung vom 30.8.1947 (Bew. 391, NI-9587, Buch 15, engl. S. 94, deutsche S. 71) sagt, blieb der Einfluss der Leitung der Sparte III auf die Dynamit-Aktien-Gesellschaft stets ausserst gering.

Der Zeuge Dencker hat in der Vormittagssitzung vom 17.10.1947 (engl. Prot.-S. 2318, deutsche Prot.-S. 2311) in Berichtigung seiner der Anklagebehörde gegenüber abgegebenen Erklärungen vor Beginn des Kreuzverhoers durch die Verteidigung im direkten Verhoer festgestellt, dass die D.G. einen eigenen Konzern innerhalb der I.G. bildete, der unter Führung von Dr. Paul Mueller stand, der als Vorstandsvorsitzer gegenüber seinem Aufsichtsrat und seinen Aktionären die gleiche Selbstständigkeit hatte, wie beispielsweise der Vorstand der I.G.. Formell sei zwar die D.G. eingegliedert gewesen in die Sparte III der I.G., was jedoch nicht bedeutet habe, dass der Leiter der Sparte III ohne weiteres in die Geschäftsführung der D.G. und der dieser Gesellschaft angeschlossenen Konzernunternehmen eingreifen konnte.

"Soweit ich es beurteilen kann, hatte Herr Dr. Fritz Gajewski Einblick in die Verhaeltnisse des D.A.G.-Konzerns nur insoweit, als dieser Einblick ihm durch Herrn Dr. Paul Mueller gewahrt wurde."

Diese Aussagen werden noch unterstrichen durch die eidesstattlichen Erklarungen von leitenden Persoenlichkeiten der D.A.G.. Der Zeuge Dr. Schmidt (Vert.Bew. 2, D.A.G.-Dok. 2, D.A.G. Dok.Buch 1, S. 8) erklart bezueglich der Angliederung der D.A.G. an die Sparte III der I.G.:

"Das bedeutete aber nicht, dass sie (die D.A.G.) dem Leiter der Sparte III unterstellt war, dass etwa der Leiter der Sparte III fuer sie die Verantwortung getragen haette. In den massgeblichen Gremien der I.G. hat Herr Dr. Paul Mueller selbst die Interessen der D.A.G. vertreten."

Er verweist dazu auf eine kurz nach Bildung der Sparten stattgefundene Besprechung zwischen Geheimrat Bosch, Dr. Mueller und Dr. Gajewski, in der auf Wunsch von Dr. Mueller das Verhaeltnis zwischen ihm und Dr. Gajewski geklaert wurde und zwar dahin gehend, dass er Dr. Gajewski nicht unterstellt sei. Der Zeuge Schmidt hat in seinem Kreuzverhoer am 30.4.1948 (engl. Prot.-S. 13 101, deutsche Prot.-S. 13 252) auf Befragen der Anklagebehoerde zu diesem Punkt ausdruuecklich bekundet, dass mit der Entscheidung von Bosch die Abgrenzung der Kompetenzen zwischen Dr. Gajewski und Dr. Mueller in dem Sinne endgueltig festgelegt worden sei, dass fuer die Geschaeftsfuehrung der D.A.G. einzig und allein Dr. Paul Mueller kompetent war.

Er hat ferner am 6.5.1948 im Kreuzverhoer durch die Anklagebehörde bekundet, dass sich diese Entscheidung auf die Selbststaendigkeit in der Fuehrung der Geschaefts der D.-G., wie sie im Par. 1 des Interessengemeinschaftsvertrages festgelegt ist, bezog und dass die I.G. dann gefragt werden musste, wenn es um grundsatzliche Fragen ging (engl. Prot.-S. 13 102 - 13 103, deutsche Prot.-S. 13 107 - 13 108). Dass auch hier das Gebiet der sog. Militaria ausgenommen war, wird an spaeterer Stelle noch ausfuehrlich dargetan.

Der Zeuge Dr. Schmidt hat in diesem Zusammenhang noch auf das Anklagebeweisstueck 2 339 (NI-13 534) hingewiesen, das ihm waehrend des Kreuzverhoers vorgelegt wurde, und festgestellt, dass die Funktion von Dr. Gajewski im Hinblick auf die D.-G. seines Erachtens nicht besser charakterisiert werden koennte, als es in diesem zeitgenoessischen Dokument geschehen ist. Es handelt sich dabei um ein Schreiben der Filmfabrik Wolfen vom 13. Maerz 1945 an die zustaeendige Kreisstabsfuehrung mit dem Antrag auf Freistellung von Dr. Gajewski von Dienst im Volksturm. In diesem Schreiben, das seinem Zweck entsprechend die Stellung von Dr. Gajewski so umfassend wie nur moeglich herausstellte, und zwar insbesondere im Hinblick auf wehrwirtschaftliche oder militaerisch wichtige Produktionen, ist Dr. Gajewski lediglich als Verbindungsmann zwischen I.G. und D.-G. bezeichnet. Von den Werken, die darin als unter seiner Leitung stehend aufgefuehrt werden, gehoert keines zur D.-G.. Ausserdem sind in der dort angegebenen Zahl der Gefolgschaft, die Dr. Gajewski zu betreuen hatte, nicht die Arbeiter und Angestellten der D.-G. enthalten. Im Gegensatz z. B. zu der Firma Kalle & Co. ist in diesem Schreiben die D.-G. nicht einmal als zur Sparte III gehoerig bezeichnet, der beste Beweis dafuer, dass die organisatorische Angliederung der D.-G. an die Sparte III selbst

von den engsten Mitarbeitern von Dr. Gajewski, naemlich den Unterzeichnern dieses Schreibens, als eine voellig formale Angelegenheit betrachtet wurde und deshalb in dem Schreiben die D.L.G. nicht als zur Sparte III gehoerig aufgefuehrt wurde, obwohl dies fuer die Begrueendung des darin enthaltenen Antrags zweifellos ein sehr starkes Argument gewesen waere.

Der Inhalt der von dem Zeugen Schmidt behandelten Heidelberger Unterredung wird auch von dem Zeugen Heinrich Lore, Direktor der D.L.G. (Vert. Bew. 3, D.L.G. Dok. 3, D.L.G. Dok.Buch I, S. 11) bestaetigt, der besonders engen arbeitsmaessigen und persoenlichen Kontakt mit Dr. Paul Mueller hatte. Dieser Zeuge bestaetigt ferner, dass Dr. Mueller vom Beginn der Interessengemeinschaft ab die grundsaeztliche Unabhaengigkeit des D.L.G.-Konzerns nachdruecklichst vertreten und sich damit auch durchgesetzt hat. Er verweist darauf, dass der D.L.G., insbesondere in der Person von Dr. Mueller, hervorragende technische Fachleute auf diesem Gebiet zur Verfuegung standen, denen die I.G. nichts annaehernd Gleichwertiges gegenueber zu stellen hatte, und dass schon deswegen die D.L.G. auf dem Sprengstoffgebiet praktisch voellig selbstaendig war. So habe sich auch die IG. auf seinem, des Zeugen, speziellen Arbeitsgebiet, naemlich dem Verkauf von Sprengstoffen fuer kommerzielle Zwecke nie eingemischt und die praktische Geschaeftpolitik sei ausschliesslich von der D.L.G. bestimmt worden. . .

Auf der gleichen Linie liegt die eidesstattliche Erklaerung des Zeugen Heinrich Schindler, (Vert. Bew. 4, D.L.G. Dok. 4, D.L.G. Dok.Buch I, S. 15), gleichfalls Direktor und der leitende Ingenieur der D.L.G., der auch seinerseits die Heidelberger Besprechung bestaetigt und bezueglich seines Arbeitsgebietes feststellt:

"dass die D.G. tatsaechlich auf technischem Gebiet praktisch ein Eigenleben gefuehrt hat."

Schliesslich hat auch der Zeuge der Anklagebehoerde, Dr. Struss, in der Nachmittagssitzung vom 9.10.1947, (engl. Prot.-S. 1 926, deutsche Prot.-S. 1 915) im Kreuzverhoer abschliessend bestaetigt, dass die I.G. auf die D.G. "nicht den geringsten technischen Einfluss" besass.

Diese Aussagen decken sich voll und ganz mit der Bekundung, die der Angeklagte Gajewski in der Sitzung vom 2.3.1948 gemacht hat(engl. Prot.-S. 8 219 - 8 220, deutsche Prot.-S. 8 291 - 8 294). Bezueglich der Heidelberger Besprechung hat Dr. Gajewski noch ergaenzend hinzugefuegt, dass im Anschluss an diese Besprechung Geheimrat Bosch ihm gesagt habe,

"dass die vorher erwaehnten Abmachungen die Zusage beinhalteten, dass Dr. Mueller selbstaendig bleiben sollte und voellig unabhaengig bleiben sollte, was mir spaeter durch Herr Geheimrat Schmitz noch einmal bestaetigte."

(engl. Prot.-S. 8 221, deutsche Prot.-S. 8 294).

Die Anklagebehoerde hat, offenbar um die vorerwaehnten Feststellungen der Zeugen Dr. Struss und Schindler ueber das Eigenleben der D.G. auf technischem Gebiet und das Nichtvorhandensein einer technischen Einflussnahme der I.G. auf die D.G. zu widerlegen, den Zeugen Dr. Schmidt am 6.5.1948 befragt, ob eine technische Zusammenarbeit zwischen der I.G., und zwar der Sparte III und der D.G. stattgefunden habe. Der Zeuge hat diese Frage zunaechst bejaht, jedoch im Rueckverhoer durch die Verteidigung angegeben, dass er ueber eine Zusammen-

arbeit auf technischem Gebiet mit der Sparte III nichts wisse, dagegen einige Beispiele fuer eine Zusammenarbeit auf anderen Gebieten, insbesondere auf dem Kunststoffgebiet, auf dem sich die Arbeit der I.G. und der D.L.G. ueberschnitt und die D.L.G. in grossem Umfang Vorprodukte der I.G. in ihren Kunststoffbetrieben verarbeitete, aufgefuehrt. Ganz abgesehen davon, dass der Zeuge Schmidt als Nichttechniker fuer die Beantwortung dieser speziellen Frage aus eigenem Wissen nur wenig sagen kann, steht die von ihm fuer die soeben erwahnten Gebiete festgestellte technische Zusammenarbeit auch keineswegs in Widerspruch dazu, dass die D.L.G. technisch ein Eigenleben gefuehrt und die I.G. in dieser Hinsicht keinen Einfluss auf sie genommen hat. Der Zeuge Schmidt hat ausdruuecklich darauf hingewiesen, dass eine solche technische Zusammenarbeit in der Art eines Erfahrungsaustausches zwischen Firmen, die auf verwandten Gebieten arbeiten, oder einander als Liefer- oder Verarbeiterfirmen gegenueberstehen, absolut ueblich ist. Sie wuerde auch ohne das Vorhandensein des Interessengemeinschaftsvertrages stattgefunden haben, ebenso wie die D.L.G. mit ihren Abnehmerfirmen in einem staendigen Erfahrungsaustausch stand, ohne dass eine dieser Firmen zu ihrem Konzern gehoerte. Der Zeuge hat abschliessend erkluert, dass er nichts davon wisse, dass auf dem Sprengstoffgebiet und insbesondere auf dem Gebiet der militaerischen Sprengstoffe irgendeine technische Zusammenarbeit mit der I.G. und speziell mit der Sparte III stattgefunden habe, er koenne sich vorstellen, dass ein Erfahrungsaustausch ueber die Verwendug von bestimmten Rohstoffen, fuer die es verschiedene Verfahren gab, erfolgt sei, aber er koenne darueber keine positiven Angaben machen (engl. Prot.-S. 13 656 - 13 659, deutsche Prot.-S. 13 932 - 13 935).

Um das Vorhandensein eines tatsächlichen Einflusses auf die technische Entwicklung der D.A.G. nachzuweisen, beruft sich die Anklagebehörde insbesondere auf den von den Zeugen Dr. Struss und Dencker hervorgehobenen Umstand, dass die D.A.G. gehalten war, ihre beabsichtigten Investitionen durch Einreichung sogenannter "Kreditanträge" beim Technischen Ausschuss der I.G. (T.A.) genehmigen zu lassen.

Nach der Bekundung von Dr. Struss (Bew. 391, NI-9487, Buch 15, engl. S. 65, deutsche S. 71) sind Kreditanforderungen betreffend Investitionen fuer Neubauten militaerischen Charakters etwa ab Kriegsbeginn nur noch sehr unregelmässig oder ueberhaupt nicht mehr eingereicht worden. Der Zeuge hat jedoch bei seiner Vernehmung in der Nachmittagssitzung vom 9.10.1947 (engl. Prot.-S. 1 922, deutsche Prot.-S. 1 913) zugegeben, dass er keine genauen Angaben darueber machen koenne, ob fuer militaerisch wichtige Anlagen Kreditantraege beim T.A. ueberhaupt eingereicht worden sind. Er halte es fuer sehr wohl moeglich, dass dies im Hinblick auf die Geheimhaltungspflicht der D.A.G. nicht geschehen ist.

Der Zeuge Dencker, der in seiner eidesstattlichen Erklaerung vom 7.6.1947 (Bew. 50, NI-7239, Buch 2, engl. S. 53, deutsche S. 41) bekundet hat, dass der T.A. ueber alle Kreditantraege der D.A.G. fuer Neuanschaffungen und Ersatzbeschaffungen zu entscheiden hatte, und dass die D.A.G. daher in Hinsicht auf beabsichtigte Investitionen von der I.G. majorisiert werden konnte, hat bei seiner Vernehmung in der Vormittagssitzung vom 17.10.1947 (engl. Prot.-S. 2 319, deutsche Prot.-S. 2 311), und zwar in der direkten Befragung durch die Anklagebehörde,

diese Aussage wie folgt modifiziert:

"Was die Kreditanträge fuer Neuanlagen anbetrifft, so habe ich in Erinnerung, dass solche fuer das Sprengstoffgebiet dem TEL. nicht vorgelegt worden sind. Die theoretische Möglichkeit einer Majorisierung der D.L.G. in Bezug auf beabsichtigte Investitionen durch den TEL. konnte sich nur auf solche Kredite erstrecken, welche dem TEL. vorgelegt wurden."

(Siehe auch engl. Prot.-S. 2 324, deutsche Prot.-S. 2 316).

Dies wird bestaetigt durch die eidesstattliche Erklaerung Schindler (Vert.Bew. 4, D.L.G.-Dok. 4, D.L.G. Dok.Buch I, S. 15), dessen Stellungnahme ganz klar dahin geht, dass die Einreichung der Kreditanträge auf Investitionen ziviler Charakters beschaenkt war und dass auch derartige Anträge waehrend des Krieges nur teilweise dem TEL. eingereicht und im uebrigen von Dr. Paul Mueller in eigener Verantwortung genehmigt wurden.

In gleicher Richtung aussert sich der Zeuge Schmidt (Vert.Bew. 5, D.L.G. Dok. 5, D.L.G. Dok.Buch I, S. 20):

"Herr Dr. Mueller war Mitglied des TEL. und hat dort selbst die sogenannten Kreditanträge der D.L.G. vertreten. Vor den TEL. wurden aber keine Kreditanträge gebracht, die irgendwie mit Militaria zu tun hatten. Von allen mit Militaria zusammenhaengenden Ausgaben erfuhr der TEL. nichts, ihre Entscheidung lag allein bei der D.L.G."

Die Anklagebehoerde hat im Kreuzverhoer Dr. Schmidt am 30.4.1948 diesem das Anklagebeweisstueck 2156 (NI-14099) vor-

gehalten (engl. Prot.-S. 13 109/10, deutsche Prot.-S. 13 312/14), aus dem sich ergibt, dass Dr. Mueller auf Veranlassung von Dr. Gajewski seit Maerz 1934 die Kreditanforderungen der D.G. im T.E. selbst vertreten hat und daran die Frage geknuepft, ob diese Regelung nicht nur im Interesse einer organisatorischen Vereinfachung getroffen worden sei. Der Zeuge Dr. Schmidt hat dazu festgestellt, dass die Einreichung der Kredite nachtrivor organisatorisch ueber die Sparte III erfolgte und im Rueckverhoer der Verteidigung am 6.5.1948 hinzugefuegt, dass die Begrueendung im T.E. durch Dr. Mueller das Gegebene war, nachdem er als Fachmann die Notwendigkeit der beantragten Geldmittel am besten darlegen konnte (engl. Prot.S. 13 651-55, deutsche Prot.-S. 13 927-32).

Die Anklagebehoerde hat schliesslich, um eine besonders enge Verbindung zwischen der D.G. und der I.G. nachzuweisen, sich auf den Umsatzsteuer-Prozess berufen, den die D.G. im Einvernehmen mit der I.G. gefuehrt hat, um eine Freistellung der Lieferungen zwischen beiden Firmen von der Umsatzsteuer zu erreichen.

(Siehe hierzu eidesstattliche Erklaerung Dencker vom 7.6.1947, Bew. 50, NI-7239, Buch 2, engl. S. 53, deutsche S. 41; sowie ferner Dokument NI-11746, Ber. 1943: Auszuege aus den Prozessakten dieses Steuerverfahrens.)

Der Zeuge Dencker hat bei seiner Vernehmung durch die Anklagebehoerde am Vormittag des 17.10.1947 (englische Prot.-S. 2 318, deutsche Prot.-S. 2 311) ausdruecklich darauf hingewiesen, dass er in seiner eidesstattlichen Erklaerung nicht etwa eine Schilderung der tatsaechlichen Verhaeltnisse gegeben, sondern lediglich geschildert hat, welche Begrueendung nach seiner Erinnerung in dem Steuerstreit zur Beweisfuehrung fuer

die Organeigenschaft von der D.L.G. gegeben wurde.

Er unterstreicht:

"In der praktischen Handhabung hat die Kontrolle der Dynamit A.G. durch die I.G. nicht dieses Ausmass gehabt, welches theoretisch moeglich war."

Der Zeuge Dr. Schmidt hat in seiner eidesstattlichen Erklaerung vom 1.12.1947 (Vert.Bew. 5, D.L.G. Dok. 5, D.L.G. Dok.Buch I, S. 18) zu dieser Frage Stellung genommen und diese seine Stellungnahme nach Einfuehrung der Auszuege aus den Prozessakten durch eine weitere Erklaerung vom 19.3.1948 (Vert.Bew. 160, D.L.G.-Dok. 28, D.L.G.-Dok.Buch III, S. 1) ergaenzt. Das Ergebnis seiner Feststellungen laesst sich dahin zusammenfassen, dass es sich bei den Ausfuehrungen in dem Steuerprozess um Parteibehauptungen handelt, die zu einem bestimmten Zweck (naemlich Anerkennung der steuerlichen Organeigenschaft) gemacht wurden.

Der Zeuge verweist auf die Tatsache, dass die D.L.G. in einem Zivilprozess, in welchem der Klaeger eine zu starke Abhaengigkeit der D.L.G. von der I.G. behauptete, mit Erfolg bis zum Reichsgericht den gegenteiligen Standpunkt vertreten habe. Der Zeuge haelt seine Schilderung der tatsächlichen Verhaeltnisse in seiner Erklaerung vom 1.12.1947 (Vert.Bew. 5, D.L.G.-Dok. 5, D.L.G.-Dok.Buch I, S. 18), worin er die Selbststaendigkeit der Geschaeftsfuehrung der D.L.G. im einzelnen schildert, voll und ganz aufrecht.

Diese Stellungnahme wird insbesondere bestaetigt in der Entscheidung des Oberfinanzpraesidenten Koeln vom 3. September 1940 (Bew. 1943, NI-11746), die sich auf besonders eingehende eigene tatsächliche Ermittlungen stuetzt. Auf Seite 14 des Originals heisst es:

"Die Erzeugungsprogramme der D.L.G. und der D.L.G.-Betriebe stehen in sich abgeschlossen und selbständig im Rahmen des I.G.-Konzerns da. I.G. und D.L.G. sind zwei wirtschaftlich gleichrangige, durch Interessengemeinschafts- und Gewinnpoolungsverträge nebeneinandergestellte Unternehmen, die auch in ihrem Produktionsprogramm selbständig bleiben und von denen keines als beherrschende Ober- (Dach-) Gesellschaft oder beherrschte Unter-(Organ-) Gesellschaft angesehen werden kann."

Im uebrigen ist die Verteidigung der Ansicht, dass es einer Eroerterung der Einzelheiten des sehr umfangreichen Vorbringens in diesem Steuerprozess hier nicht bedarf, denn eines steht ausser Frage: selbst in diesem Prozess, in dem die D.L.G. ein Interesse daran hatte, ihre Bindungen an die I.G. in jeder Beziehung so stark als nur moeglich darzustellen, ist nie der geringste Versuch unternommen worden, auf dem hier allein interessierenden Gebiet der Betätigung der D.L.G. auf dem militärischen Sektor irgendeine Abhängigkeit oder Kontrolle zu behaupten.

Der Zeuge Schmidt sagt dazu in seiner eidesstattlichen Erklärung vom 19.3.1948 (Vert.Bew. 160, D.L.G-Dok. 28, D.L.G-Dok. Buch III, S. 1), dass es die Prozesslage ausserordentlich erleichtert haette, wenn die D.L.G. haette behaupten koennen, dass Herr Dr. Gajewski Einfluss in militärischen Dingen gehabt haette, denn die D.L.G. musste das Argument entkraeften,

"dass man bei uns (D.L.G.) doch nicht von einer absoluten Abhängigkeit von der I.G. sprechen koenne, wenn wir einen so wesentlichen Teil unseres Gesamtge-

schafftes voellig selbstaendig und ohne Befragen
der I.G. fuehrten."

Dass tatsaechlich die D.A.G. in ihren Eingaben im Zuge des
Umsatzsteuerstreites ihre Selbstaeendigkeit auf diesem Gebiet
nicht in Abrede gestellt hat, ergibt sich insbesondere aus
den Seiten 25/26 und 47 des Originals des Anklagebeweisstuecks
1943, auf die hiermit ausdruecklich Bezug genommen wird. Des-
gleichen befindet sich diese Feststellung auch in der Ent-
scheidung des Oberfinanzpraesidenten Koeln, und zwar auf den
Seiten 9/10 des Originals. Dabei wird insbesondere darauf
hingewiesen, dass es sich bei den hier in Bezug genommenen
Ausfuehrungen des Oberfinanzpraesidenten nicht etwa um recht-
liche Wuerdigungen handelt, deren Beweiswert hier zweifelhaft
sein koennte, sondern um Tatsachenfeststellungen, die sich
nicht nur auf den Parteivortrag, sondern auch auf sehr sorg-
faeltige eigene Ermittlungen ueber die tatsaechlichen Ver-
haeltnisse durch die Finanzbehoerden selbst stuetzen.

Da der Reichsfinanzhof die Entscheidung der Vorinstanz
nur in rechtlicher Beziehung nachgeprueft hat, aber bei
seiner Entscheidung an die Tatsachenfeststellungen der
Vorinstanz gebunden war, werden diese Tatsachenfest-
stellungen durch das Urteil dieses Gerichtshofs in ihrer
Wirksamkeit nicht beruehrt.

Die Anklagebehoerde hat zur Stuetzung ihrer Auffassung ueber
den bestehenden engen Kontakt zwischen der D.A.G. und der I.G.
noch eine Reihe von zeitgenoessischen Dokumenten vorgelegt,
zu welchen die Verteidigung Stellung genommen hat. Die Ver-
teidigung glaubt, davon absehen zu koennen, sich im Rahmen
dieses Schlussbriefes mit all' diesen Dokumenten im einzelnen

auseinandersetzen zu müssen und beschränkt sich darauf, im Nachstehenden die Belastungsdokumente, soweit sie nicht in anderem Zusammenhang ausführlich behandelt sind, und das widerlegende oder klarstellende Verteidigungsmaterial zu jedem von ihnen einander gegenüber zu stellen. Gemeinsam ist diesen Dokumenten der Anklagebehörde, dass sie auf einem bestimmten Einzelgebiet und in einem konkreten Einzelfall eine geschäftliche Verbindung zwischen den beiden Firmen dartun. Eine solche Verbindung ist unstreitig, die Fälle sind aber weder typisch für die Art der geschäftlichen Zusammenarbeit noch geeignet, den Nachweis zu erbringen, dass diese Zusammenarbeit derartig war, dass die Angeklagten daraus ein auch nur ungefähres Bild von der Tätigkeit der D.L.G. insbesondere auf dem Pulver- und Sprengstoffgebiet erlangt haben.

- 1.) Schreiben Dr. Paul Mueller D.A.G. an Dr. Kraenzlein,
I.G.-Hoechst vom 9.12.1935, Dok.Nr. NI-6498,
Anklagebeweisstueck Nr. 111;
Siehe hierzu
Eidesstattliche Erklaerung von Heinrich Schindler vom
3.12.1947, D.A.G.-Dok.Nr. 24, Verteidigungsbeweisstueck Nr. 24.
- 2.) Schreiben von Dr. Paul Mueller, D.A.G. an Direktor Ludwigs,
I.G.-Frankfurt, vom 13.4.1940, Dok.Nr. NI-6345, Anklage-
beweisstueck Nr. 327;
Siehe hierzu:
Eidesstattliche Erklaerung von Franz Anton Gierlichs vom
3.12.1937, D.A.G.-Dok.Nr. 25, Verteidigungsbeweisstueck Nr. 25.
- 3.) Eidesstattliche Erklaerung von Dr. Ernst Struss vom
30.8.1947, Dok. Nr. NI-9487, Anklagebeweisstueck Nr. 391,
bezuglich der Fachkommission Saeure;
Siehe hierzu:
Eidesstattliche Erklaerung von Heinrich Schindler vom
3.12.1947, D.A.G.-Dok.Nr. 26, Verteidigungsbeweisstueck Nr. 26.
- 4.) Rundschreiben der Vermittlungsstelle W der I.G. Farben-
industrie vom 23.3.1937, Dok. Nr. NI-4625, Anklage-
beweisstueck 329;
Siehe hierzu:
Eidesstattliche Erklaerung Schindler vom 24.2.1948,
D.A.G.-Dok. Nr. 31, Verteidigungsbeweisstueck Nr. 163,
D.A.G.-Dok.Buch III, S. 12.
- 5.) Schreiben Dr. Paul Mueller an Dr. Gajewski vom
22.10.1935, Dok.Nr. NI-13532, Anklagebeweisstueck Nr. 1936;

Siehe hierzu:

Eidesstattliche Erklärung Schindler vom 25.3.1948,
D.G.-Dok. Nr. 32, Verteidigungsbeweisstueck Nr. 164,
D.G.-Dok.Buch III, S. 15.

- 6.) Dok. Nr. NI-13533, Anklagebeweisstueck Nr. 1937,
enthaltend eine Reihe von Briefen und eine Aktennotiz;

Siehe hierzu:

Eidesstattliche Erklärung von Heinrich Schindler
vom 16.3.1948, D.G.-Dok. Nr. 33, Verteidigungsbe-
weisstueck Nr. 165, D.G.-Dok.Buch III, S. 17.

- 7.) Antwortschreiben Dr. Wurster an Dr. Paul Mueller vom
13.3.1937 auf dessen Brief vom 12.3.1937, Dok. Nr.
NI-13571, Anklagebeweisstueck Nr. 1940.

Siehe hierzu:

Eidesstattliche Erklärung von Friedrich Duehring
vom 25.3.1948, D.G.-Dok. Nr. 34, Verteidigungsbeweis-
stueck Nr. 166, D.G.-Dok.Buch III, S. 22 und Dok.Buch II
Dr. Wurster, Exhibits 55 - 61, Dok. 599 sowie Dokumente
581 - 586, S. 30 - 45.

- 8.) Aktennotiz der Zentralfinanzverwaltung der I.G. in
Berlin v. 6.8.1938, Dok. Nr. NI-13513, Anklagebe-
weisstueck 1938.

Siehe hierzu:

Aussage Gajewski Protokoll v. 3.3.1948, o. S. 8298/99,
u. S. 8380.

- 9.) Aufstellung ueber die Umsatze der 3 Sparten der I.G.
nebst eidesstattlicher Erklärung Dr. Struss, Dokumente
NI-14273 und 14 499, Anklagebeweisstuecke 1941 und 1942.

Siehe hierzu:

Kreuzverhoer Dr. Struss, Protokoll vom 6.5.1948,
engl. S. 13617, deutsche Seite 13912.

10.) Schreiben der Rechtsabteilung der I.G. Berlin NW 7 an
die D.L.G. vom 2.5.1938, Dok. Nr. NI-13 516, Exhibit 1945.

Siehe hierzu:

Aussage Gajewski, Protokoll vom 3.3.1948, engl. S. 8310,
d. S. 8392/93.

3. Die Unterrichtung der I.G. und insbesondere der

 Angeklagten Schmitz und Gajewski ueber die Taetig-

 keit der D.L.G. auf dem Ruestungsgebiet.

Ergibt sich somit, dass der Abschluss des Interessenge-
 meinschaftsvertrages kein Aufgeben der Selbststaendigkeit der
 D.L.G. in der Fuehrung ihrer Geschaeftse bedeutete und dass auch
 eine Kontrolle der Taetigkeit der D.L.G. auf technischem Ge-
 biet, insbesondere hinsichtlich der Erzeugung von militaer-
 rischen Produkten nicht gegeben war, so bleibt als naechstes
 die Frage zu pruefen, in welchem Ausmass die I.G. als solche
 oder bestimmte Einzelpersonen und insbesondere die Ange-
 klagten Schmitz und Gajewski ueber die allgemeine Geschaefts-
 entwicklung oder bestimmte Einzelvorgaenge bei der D.L.G. unter-
 richtet wurden und ob diese Unterrichtung derart war, dass
 sie den Empfaengern dieser Berichte einen Einblick in den
 Umfang der Betaetigung der D.L.G. im Rahmen der deutschen Wieder-
 bewaffnung ermoeeglichte.

Die Anklagebehoerde hat den Zeugen Schmidt, der sich fuer
 die Verteidigung zu dieser Frage der Unterrichtung in seiner
 eidesstattlichen Erklaerung vom 1.12.1947 (Vert.Bew. 7,
 D.L.G-Dok. 7, D.L.G-Dok.Buch I, S. 26) geaeussert hatte, sehr
 ausfuehrlich ins Kreuzverhoer genommen. Sie hat dabei durch
 sehr allgemein gehaltene bzw. verallgemeinernde Fragen,
 in denen die verschiedenen Arten der Berichterstattung
 durcheinander gingen, die an sich sehr klaren Verhaeltnisse
 verwirrt. Die Verteidigung legt deshalb besonderen Wert auf
 eine erschoeppfende Behandlung dieses Punktes, da sie nach

folgenden Gesichtspunkten aufgliedert:

- a. Berichterstattung an die Zentral-Finanzverwaltung der I.G.
- b. Berichterstattung an den Aufsichtsrat und insbesondere die Angeklagten Schmitz und Gajewski in ihrer Eigenschaft als Aufsichtsratsmitglieder.
- c. Die sonstige Unterrichtung des Angeklagten Schmitz.
- d. Die Bilanzprüfungsberichte der D.G..

Zu a:

In seiner vorerwähnten eidesstattlichen Erklärung vom 1.12.1947 (Vert.Bew. 7, D.G-Dok. 7, D.G-Dok.Buch I, S. 26) hat der Zeuge Schmidt bestätigt, dass eine laufende Unterrichtung der I.G. ueber den gewöhnlichen Geschäftsgang bei der D.G. nicht stattgefunden hat, dass andererseits aber in regelmässigen Zeitabständen ueber die Umsatzentwicklung, Geldein- und -ausgänge und andere finanzielle Vorgänge berichtet wurde. Diese Berichte gingen, wie sich aus dem Kreuzverhoer des Zeugen Schmidt am 30.4.1948 (engl. Prot.-S. 13 112 - 14, deutsche Prot.-S. 13 316 - 13 319) und aus dem Rueckverhoer der Verteidigung am 6.5.1948 (engl. Prot.-S. 13 659 - 62, deutsche Prot.-S. 13 936 - 39) ergibt, an die Zentral-Finanzverwaltung der I.G. in Berlin und nicht an den Vorstand der I.G.. Eine Uebersendung dieser Berichte an andere Stellen hat der Zeuge trotz wiederholter Befragung durch die Anklagebehoerde nicht bestaetigen koennen. Hinsichtlich der Aufmachung und des Inhalts der Berichte im einzelnen konnte sich der Zeuge, wie sich aus den vorgenannten

Protokollstellen ebenfalls ergibt, nicht aussagen. Er wusste insbesondere nicht, ob die Berichterstattung ueber die Umsatzentwicklung, die jedenfalls mit Sicherheit nicht den Charakter von Verkaufsberichten mit Einzelangaben ueber verkaufte Waren, Empfänger der Waren und sonstige Details hatte lediglich den Gesamtumsatz in globalen Zahlen enthielten oder ob er nach den verschiedenen Produktionsgruppen, wie Kunststoffen, Sprengstoffen usw. aufgeteilt war (siehe engl. Prot.-S. 13 660/61, deutsche Prot.-S. 13 938). Desgleichen konnte er keine Angaben darueber machen, ob in diesen Umsatzberichten die militaerischen Umsatze enthalten waren und wenn ja, ob in einer Summe mit den zivilen Sprengstoffen oder getrennt. Dagegen hat der Zeuge (siehe engl. Prot.-S. 13 661/62, deutsche Prot.-S. 13 939) eindeutig bestaetigt, dass in diesen rein finanziell ausgerichteten Berichten keine Einzelheiten ueber die Produktion, ueber Inbetriebnahme neuer Kapazitaeten, ueber Planungen, insbesondere auf militaerischem Gebiet, oder sonstige Einzelheiten, die Anhaltspunkte fuer eine Kenntnis ueber die Betaetigung der D.L.G. auf dem Ruestungsgebiet vermittelt haetten, enthalten waren.

Hinsichtlich sonstiger laufender Berichterstattung an die I.G. hat der Zeuge Schmidt in dem Vert.Beweisstueck 7 festgestellt,

"fuer eine weitergehende Berichterstattung lag keine Veranlassung vor, da die Arbeitsgebiete zwischen I.G. und Dynamit L.G. voellig getrennt waren."

Der Zeuge Willi Helfert hat in seiner eidesstattlichen Erklaerung vom 4. Mai 1948 (Vert.Bew. 287, D.L.G.-Dok. 40, Nachtrag zum D.L.G.-Dok.Buch III, S. 45) ebenfalls zu diesen, u. a. von der D.L.G. an die Zentral-Finanzverwaltung uebermittelten sogenannten Fi-

finanzberichten Stellung genommen. Er stellt fest, dass diese von der D.G. wie von sehr vielen anderen Konzernfirmen regelmässig uebersandten Berichte von ihm persoenlich zur Erstellung des sogenannten Finanzplans verwandt wurden, der den Zweck hatte, eine Uebersicht ueber die voraussichtlichen Einnahmen und den voraussichtlichen Finanzbedarf des Konzerns im Laufe des naechsten halben Jahres zu erlangen. Der Zeuge stellt fest:

"In den Finanzplan wurden von mir bzw. meiner Abteilung nur die globalen Ziffern aus den einzelnen Unterlagen hereingenommen. Weder Herr Geheimrat Schmitz noch Herr Dr. Ilgner erhielten von mir die einzelnen Unterlagen, also z. B. die Finanzberichte der D.G." (Unsere Unterstreichung).

Diese Aussage des Zeugen Helfert beweist auf der einen Seite ganz klar, dass es sich bei dieser Berichterstattung um eine rein finanzielle Unterrichtung handelt; gleichzeitig geht aus ihr hervor, dass die ihm zugehenden Unterlagen, wie z. B. die hier in Frage stehenden Finanzberichte der D.G., von dem Zeugen nur persoenlich ausgewertet wurden und weder dem Angeklagten Schmitz noch dem Angeklagten Dr. Ilgner von ihm vorgelegt worden sind.

Aus der eidesstattlichen Erklaerung Franz Anton Gierlichs von 9. Mai 1948 (Vert.Bew. 286, D.G.-Dok. 39, Nachtrag zum D.G.-Dok. Buch III, S. 44) geht gleichzeitig hervor, dass auch von der D.G. direkt diese Berichte normalerweise nicht im Durchschlag an den Angeklagten Schmitz gesandt wurden und dass eine Aenderung in dieser Handhabung erst im Jahre 1944, vermutlich ab 1. April 1944 eintrat. Von diesem Zeitpunkt ab wurden die Berichte in einem Durchschlag an den Angeklagten Schmitz nach Heidelberg gesandt,

weil infolge der Kriegsverhaeltnisse bereits sehr viel Post durch Feindeinwirkung verloren ging und auch die Verbindung zwischen der Zentral-Finanzverwaltung in Berlin und dem damals in Heidelberg lebenden Angeklagten Schmitz bereits sehr schwierig geworden war.

Zu b:

Die Angeklagten Schmitz und Gajewski gehoerten dem Aufsichtsrat der D.A.G. an. Schmitz von 1926 - 1945, seit 1938 als dessen Vorsitzender, Gajewski von 1936 - 1945. (Siehe eidesstattliche Erklaerung Franz Anton Gierlichs vom 19.12.1947, Vert.Bew. 6, D.A.G.-Dok. 6, D.A.G.-Dok.Buch I, S. 24, aus der sich im uebrigen ergibt, dass der Aufsichtsrat der D.A.G. in den Jahren von 1926 bis 1945 immer mindestens 18 und im Hoechsfalle 28 Mitglieder umfasste und dass davon zu keinem Zeitpunkt mehr als gleichzeitig drei Mitglieder Vertreter der I.G. waren.)

Ueber die Unterrichtung des Aufsichtsrats bemerkt der Zeuge Schmidt in seiner eidesstattlichen Erklaerung (Vert. Bew. 7, D.A.G.-Dok. 7, D.A.G.-Dok.Buch I, S. 26), dass sich die D.A.G. darauf beschaenkte, die gesetzlich vorgeschriebenen Vierteljahresberichte schriftlich zu erstatten und jaehrlich einmal eine Aufsichtsratssitzung abzuhalten. Der Zeuge faehrt fort:

"Als das Geschaeft der Dynamit A.G. weitgehend durch Militaria beeinflusst wurde, ueber die wir auch dem Aufsichtsrat gegenueber zur Geheimhaltung verpflichtet waren, haben wir diese Gelegenheit benutzt, unsere Vierteljaehrliche Berichterstattung ueberhaupt einzustellen. Der Aufsichtsrat ist also nur noch in den

jährlichen Aufsichtsratssitzungen unterrichtet worden. In ihr durften wir ueber Militaria nicht sprechen."

Zu Beginn seiner Vernehmung am 30.4.1948 (engl. Prot.-S. 13 094/96, deutsche Prot.-S. 13 245/47) hat der Zeuge Schmidt hierzu ergaenzend klargestellt, dass die Vierteljahresberichte etwa ab 1935 zwar nicht mehr an den gesamten Aufsichtsrat gingen, wohl aber noch an den Vorsitzenden des Aufsichtsrates, der bis zum Sommer 1938 D. Max von Schinckel war, der mit der I.G. nichts zu tun hatte. Als der Angeklagte Schmitz im Sommer 1938 Aufsichtsratsvorsitzender der D.G. wurde, erhielt er in dieser Eigenschaft noch einmal den Vierteljahresbericht in der Form, wie er bis dahin Herrn v. Schinckel zugeleitet worden war.

Die weiteren, dem Aufsichtsratsvorsitzenden, also dem Angeklagten Schmitz zugeleiteten Vierteljahresberichte enthielten dann ueberhaupt keine sachlichen Mitteilungen mehr, sondern nur noch Umsatzzahlen und Angaben ueber den Belegschaftsstand. Im Rueckverhoer durch die Verteidigung am 6.5.1948 hat der Zeuge Schmidt diese Angaben im einzelnen bestaetigt (engl. Prot.S. 13 662-67, deutsche Prot.-S. 13 940 - 45).

Diese berichtigenden Angaben des Zeugen Schmidt werden bestaetigt durch die eidesstattliche Erklaerung Franz Anton Gierlichs vom 9. Mai 1948 (Vert.Bew. 285, D.-G.-Dok. 38, Nachtrag zum D.-G.-Dok.Buch III, S. 42), in der sich der Zeuge gleichzeitig mit den Anklagedokumenten NI-15163 und NI-15162 beschaeftigt.)

Zusammenfassend ist danach ueber die Unterrichtung der Angeklagten Schmitz und Gajewski in ihrer Eigenschaft als Aufsichts-

ratsmitglieder der D.G. folgendes festzustellen:

Da der Angeklagte Gajewski erst im Jahre 1936 Aufsichtsratsmitglied geworden ist, und die vierteljaehrliche Berichterstattung an alle Aufsichtsratsmitglieder bereits im Jahre 1935 eingestellt wurde, hat er diese Berichte nie erhalten und ist ueberhaupt nur in den jaehrlichen Aufsichtsratssitzungen, auf denen ueber Militaria nicht gesprochen werden durfte, unterrichtet worden, soweit er an diesen teilnahm. Der Angeklagte Schmitz hat die vierteljaehrlichen Aufsichtsratsberichte bis 1935 (naemlich solange sie allen Aufsichtsratsmitgliedern zugeleitet wurden) erhalten. Er hat dann im Jahre 1938 noch einen Bericht ueber das zweite Quartal 1938 in der alten Form erhalten und von diesem Zeitpunkt ab sind ihm lediglich vierteljaehrliche Umsatzvergleiche sowie die Belegschaftszahlen uebermittelt worden. Die Anklagebehoerde hat in immer wiederholter Befragung und durch ganz allgemein gehaltene Fragenstellung waehrend ihrer Vernehmung des Zeugen Schmidt versucht, dieser Berichterstattung eine Bedeutung in dem Sinne beizulegen, dass sie einen Einblick in die Taetigkeit der D.G. auf dem Ruestungsgebiet vermittelt habe. Dem gegenueber hat der Zeuge Schmidt sich auf eine abschliessende Frage der Verteidigung wie folgt geaussert:

*F: Ich moechte zusammenfassend fragen: War nach Ihrer Auffassung als Verbandsmitglied der D.G. diese Vierteljahresberichterstattung, insbesondere von 1938 ab geeignet, dem Aufsichtsratsvorsitzenden ueberhaupt nur einen oberflaechlichen Einblick in die Produktionsverhaeltnisse und die Gesamtbeteiligung der D.G. auf dem Ruestungsgebiet zu vermitteln.

—: Nein, nur Zahlen, reine Zahlen."

(Engl. Prot.-S. 13 667, deutsche Prot.-S. 13 945).

Der Zeuge Franz Anton Gierlichs hat in seiner eidesstattlichen Erklärung vom 9. Mai 1948 (Vert.Bew. 285, D-G-Dok. 38, Nachtrag zum D-G-Dok.Buch III, S. 42) zu dieser Frage noch wie folgt Stellung genommen:

"Die vom 2. Quartal 1938 ab Herrn Geheimrat Schmitz als Aufsichtsratsvorsitzenden uebermittelten Umsatzeübersichten enthielten lediglich wertmassige Umsatzzahlen, so dass aus diesen Übersichten die Umsatze der Menge nach weder insgesamt noch fuer die Produkte im einzelnen entnommen werden konnten."

Wie gering im uebrigen die Beziehungen des Angeklagten Schmitz selbst als Aufsichtsratsvorsitzer zur praktischen Arbeit der D.G. waren, beweist am besten der Umstand, dass der Zeuge Schindler, der als der leitende Ingenieur der D.G. auf dem militaerischen Neubaugebiet der zustaeendige Mann war, zu Schmitz keinerlei Verbindung hatte, wie er am 23.4.1948 im Kreuzverhoer der Anklagebehoerde ausgesagt hat (engl. Prot. S. 12 351, deutsche Prot. S. 12556).

Zu c:

Wie sich aus der eidesstattlichen Erklärung Schmidt (Vert.Bew. 7, D-G-Dok. 7, D-G-Dok.Buch I, S. 26) ergibt, fanden alljaehrlich Bilanzbesprechungen zwischen dem Angeklagten Schmitz und den leitenden Herren der D.G. statt, die sich ausschliesslich auf das kaufmaennische Ergebnis des

vorgangenen Geschäftsjahres beschränkten. Die Anklagebehörde hat im Kreuzverhör des Zeugen Schmidt diesem das gleichzeitig eingeführte Dokument NI-15260 (Bew. 2341) vorgehalten (Schreiben der D.G. an den Angeklagten Schmitz vom 4. September 1944 über den Finanzstatus der D.G.) und ihn befragt, ob eine diesem Schreiben entsprechende Unterrichtung des Angeklagten Schmitz regelmässig stattgefunden hat. Der Zeuge konnte keine konkrete Beantwortung zu dieser Frage machen, hat es jedoch mit Rücksicht auf den einleitenden Satz dieses Schreibens für nicht wahrscheinlich erklärt, dass derartige Berichte regelmässig erstattet wurden. Dem gegenüber stellt der Zeuge Franz Anton Gierlich in seiner eidesstattlichen Erklärung vom 9. Mai 1948 (Verf.Bew. 284, D.G.-Dok. 37, Nachtrag zum D.G.-Dok.Buch III, S. 38) eindeutig fest:

"Ich bestätige ferner, dass nach den von mir bei der Buchhaltung der D.G. getroffenen Feststellungen Berichte nach der Art des Anklagebeweistuecks 2341 erst für die Zeit ab 1.6.1944 an Herrn Geheimrat Schmitz erstattet worden sind."

Auch dieser Bericht ist also eine Auswirkung des sich bereits anbahnenden deutschen Zusammenbruchs, der den Angeklagten Schmitz veranlasste, sich ein genaueres Bild über die Engagements der D.G. zu verschaffen, insbesondere gegenüber der I.G. und den Banken, die, wie das Dokument zeigt, aber nicht vorhanden waren.

Zu d:

Bezüglich der Bilanzprüfungsberichte der D.G. hat der Zeuge Schmidt festgestellt, dass diese den Mitgliedern des Aufsichtsrats in dieser Eigenschaft nicht zugänglich waren. Jedoch wurden

diese Berichte, wie sich auch aus dem Anklagebeweisstueck 1816, NI-12 740, ergibt, von der Zentralbuchhaltung der I.G. bis zum Jahre 1939 den Herren Geheimrat Bosch, Dr. Gajewski sowie dem TEL-Buero und der Zentral-Finanzverwaltung zugeleitet, waehrend vom Jahre 1940 ab Geheimrat Schmitz als Empfaenger dieser Berichte an die Stelle von Geheimrat Bosch trat.

Die Anklagebehoerde hat als Dokument NI-15 062 (Bew. 2311) Auszuege eines derartigen Pruefungsberichtes, naemlich fuer das Jahr 1938 vorgelegt und den Zeugen Schmidt sehr eingehend hierueber gefragt, wobei sie wieder erfolglos versucht hat, von ihm eine Erklaerung des Inhalts zu bekommen, dass sich aus dieser Berichterstattung ergaebe, dass die I.G. ueber die Betaetigung der D.L.G. auf dem Ruestungssektor unterrichtet worden sei. Tatsaechlich laesst sich aber fuer den Standpunkt der Anklagebehoerde auch aus diesen Bilanzpruefungsberichten nichts gewinnen. Im Gegenteil beweist gerade dieser Bericht mit aller Eindeutigkeit, dass auch die Bilanzpruefungsgesellschaft in Anbetracht der Geheimhaltungsbestimmungen sich aeusserste Zurueckhaltung in allen Fragen, die den militaerischen Bereich betrafen, auferlegen musste. Dies geht soweit, dass bei der Darstellung der Umsaetze der D.L.G. die einzelnen Produkte ueberhaupt nicht genannt werden duerfen, und dass auch bei der Zusammenfassung in Produktengruppen nicht etwa von zivilen und militaerischen Sprengstoffen die Rede ist, sondern von Sprengstoffen A und Sprengstoffen B, was, wie der Zeuge Schmidt im Zeugenstand am 6.5.1948 (engl. Prot.-S. 13 700/01, deutsche Prot.-S. 13 999) bekundet hat, zivil und militaerisch bedeutete. Wie der Zeuge gleichzeitig bestaetigte, ist aber diese Erlaeuterung der Buchstaben A und B

im Bericht selbst nicht enthalten, so dass der Leser des Berichts, der keine weiteren Informationen hat, keinen Einblick in die Bedeutung dieser beiden Buchstaben gewinnen kann.

(Engl. Prot.-S. 13 712/13, deutsche Prot.-S. 14 010/11).

Bei der Erörterung der Produktion der einzelnen D.L.G.-Werke wird zwar allgemein angegeben, ob die Erzeugung der einzelnen Fabriken zivilen oder militärischen Charakter hat, aber auch hier wird auf jede weitere Information, wie auch nur die Angabe der erzeugten Produkte, Kapazitäten usw. verzichtet. Der Zeuge Schmidt hat demzufolge auch bestätigt, dass diese Berichterstattung in keiner Weise geeignet sei, dem Empfänger ein Bild der tatsächlichen Vorgänge zu geben.

(Siehe engl. Prot.-S. 13 715, deutsche Prot.-S. 14 012).

Am klarsten aber wird die These der Anklagebehörde widerlegt, wenn man sich vor Augen hält, dass der in Frage stehende Bericht selbst 92 Seiten und eine grosse Anzahl von Anlagen umfasst, und dass die beiden im vorstehenden behandelten Punkte, die zusammen noch nicht eine Seite ausmachen, die einzige "Information" ueber die Tätigkeit der D.L.G. auf dem militärischen Sektor darstellen. Was also die Empfänger dieser Berichte aus ihnen entnehmen konnten, war, dass die D.L.G. in die deutsche Wiederbewaffnung eingeschaltet war. Um diese Tatsache zu erfahren, hätte es aber der Lektüre dieser Berichte nicht bedurft. Denn es war fuer jeden in Deutschland offensichtlich, dass der grösste Erzeuger von zivilen Sprengstoffen nach der öffentlich verkündeten deutschen Wiederbewaffnung in dieses Programm in irgend-einer Weise eingeschaltet wurde. Mehr aber war aus den

oben behandelten Angaben, vor allem fuer solche Empfaenger, die der Arbeit der D.G. im uebrigen fern standen und infolgedessen nicht sachverstaendig waren, nicht zu entnehmen. Vor allem liessen sie keinerlei Rueckschluesse auf die Gesamtverhaeltnisse auf dem militaerischen Pulver- und Sprengstoffgebiet zu.

In dem von der Anklagebehoerde vorgelegten Beweisstueck 1816, NI-12 740, (eidesstattliche Erklaerung von Otto Heilbrunn vom 28. November 1947) ist als Anlage B eine Zusammenstellung der Umsaetze der D.G. von 1935 bis 1942 enthalten. Zunaechst bestaetigt diese Aufstellung, die aufgrund der Bilanzpruefungsberichte der D.G. fuer die entsprechenden Jahre zusammengestellt worden ist, dass in diesen Berichten nicht von militaerischen Umsaetzen, sondern nur von Sprengmitteln .. und B sowie von Munition .. und B die Rede ist. Darueber hinaus muss festgestellt werden, dass niemanden in der I.G. und insbesondere keinem der Angeklagten jemals eine derartige Zusammenstellung zugeleitet worden ist, sondern immer nur der Pruefungsbericht fuer das betreffende Jahr. Schliesslich zeigt aber selbst diese Zusammenstellung, dass die Betaetigung der D.G. vor allem auf dem Sprengstoffgebiet, bis zum Kriegsausbruch verhaeltnismaessig niedrig war und erst im Kriege, und zwar ab 1940 staerker anstieg.

Aus den vorstehenden Ausfuehrungen und der Zusammenstellung des Beweismaterials ergibt sich somit, dass die D.G., insbesondere auf dem hier allein interessierenden Ruestungsgebiet voellig selbstaendig und ohne Befragung der I.G. handelte, und zwar auch dann, wenn es um Fragen von weitgehender Bedeutung ging, und dass auch keine Unterrichtung derart erfolgte, dass die Angeklagten, insbesondere Schmitz und Gajewski daraus ein

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auch nur einigermaßen vollständiges Bild über die Tätigkeit der D.L.G. auf diesem Gebiet gewinnen konnten. Somit fehlte überhaupt jede Basis für einen Rückschluss der Angeklagten dahingehend, dass in Anbetracht des Umfanges der Tätigkeit der D.L.G. auf dem Rüstungssektor mit einem Angriffskrieg seitens der deutschen Regierung gerechnet werden musste, wie es die Anklagebehörde offenbar behaupten will. Noch viel weniger kann bei diesem Sachverhalt die Rede davon sein, dass sie durch Duldung der ihnen gar nicht näher bekannten Tätigkeit der D.L.G. eine - ihnen ebenfalls nicht bekannte - Angriffspolitik der Regierung gebilligt und damit unterstützt hätten.

4. Die Betätigung der Gesellschaft m.b.H. zur Verwertung chemischer Erzeugnisse (Verwertchemie) auf dem Ruestungsgebiet, ihr Verhaeltnis zum Reich, (Verwertungsgesellschaft fuer Montanindustrie m.b.H.), zur

D.G. und zur I.G.

Gelten die vorstehenden Feststellungen schon fuer die Taetigkeit der D.G. selbst auf dem Gebiet der Wiederbewaffnung, so trifft das gleiche in noch viel staerkeren Masse bezueglich der Gesellschaft m.b.H. zur Verwertung chemischer Erzeugnisse (Verwertchemie) zu, bei der das Schwergewicht der Ruestungsproduktion des D.G.-Konzerns lag. Diese im Jahre 1934 von der D.G. gegruendete Tochtergesellschaft, die zunaechst anderen Zwecken diente, uebernahm Anfang 1937 als Treuhaender die Betriebsfuehrung von Anlagen, die der reichseigenen "Verwertungsgesellschaft fuer Montanindustrie m.b.H." in Berlin gehoerten. (Bew. 2312, NI-15 063; die hiervon abweichende Aussage des Zeugen Schmidt am 30.4.1948, wonach die Verwertchemie urspruenglich der D.G. und der Wasag gemeinsam gehoerte, ist danach also unzutreffend, engl. Prot.-S. 13 122, deutsche Protokoll-S. 13 326). Es war also nicht der Zweck dieser Gesellschaft, eigene Anlagen zu errichten und zu betreiben, sie war vielmehr ausschliesslich als Betriebsfuehrungsgesellschaft fuer reichseigene Betriebe taetig. Es ist unstreitig, dass die Verwertchemie eine 100%ige Tochter der D.G. war und dass ihre Leitung aus Personen bestand, die gleichzeitig Angestellte der D.G. waren. Das bedeutet aber keineswegs, dass die D.G. oder ihre in der

Geschäftsführung der Verwertchemie tätigen Angestellten deshalb selbständige Entscheidungsbefugnisse hinsichtlich der praktischen Betätigung der Verwertchemie gehabt hätten. Wie der Zeuge Schindler im Kreuzverhör am 28.1.1948 ausgeführt hat (engl. Prot.-S. 12 764, deutsche Prot.-S. 13 015), zeigt sich dies insbesondere an der von der Norm völlig abweichenden Art der Auftragserteilung durch das OKH., das ja als Auftragsgeber allein in Frage kam. Der Anlauf jeder Fabrik wurde besonders befohlen, desgleichen eine etwaige Stilllegung. Jede kleinste Bestellung lautete auf ein bestimmtes Werk und nicht etwa auf die Verwertchemie schlechthin. Es gab keinerlei Initiative der Geschäftsführung der Verwertchemie nach der Richtung, eine Bestellung etwa aus Gründen der Wirtschaftlichkeit statt auf dem einen auf dem anderen Werk ausführen zu lassen, oder zur Verbilligung zwei gleichartige auf zwei verschiedene Werke lautende Aufträge zusammenzulegen.

Wie weit die von den Reichsbehörden geforderte Distanzierung der Verwertchemie sogar in organisatorischer Hinsicht gegenüber der Muttergesellschaft, also der D.G., ging, beweist die aus dem Anklagebeweisstück 1943, NI-11746, ersichtliche Tatsache (Seite 13 des Originals), dass auf Anordnung des Reichs die Verwertchemie nicht Organ der D.G. im steuerrechtlichen Sinne sein durfte, obwohl sie eine 100%ige Tochter war.

Gilt diese Distanzierung schon fuer das Verhaeltnis Verwertchemie-D.G., so kann von einer Verbindung Verwertchemie-I.G., ueberhaupt nicht die Rede sein. Der Zeuge Schindler legt in seiner eidesstattlichen Erklaerung vom 18.12.1947 (Vert.Bew. 8,

D.G-Dok. 8, D.G-Dok.Buch I, S. 31) im einzelnen dar, dass die von der D.G. im Reichsauftrag erbauten und von der Verwertchemie betriebenen Fabriken von dem Geschäftsbetrieb der I.G. streng zu trennen sind, weil diese weder eine Verantwortung fuer sie trug, noch irgendwelche Einwirkungsmöglichkeit auf sie hatte. Der Zeuge weist zunaechst darauf hin, dass der sogenannte Mantelvertrag zwischen dem Reich und der D.G. ueber die Errichtung derartiger Anlagen im Par. 11, Ziffer 1 vorsah, dass das OKH. jederzeit berechtigt war, die Anlagen selbst zu betreiben oder durch jemand anderen betreiben zu lassen und stellt fest, dass das Heereswaffenamt von diesem Recht, wenn auch nicht in der Regel, so doch in praktischen Faellen Gebrauch gemacht hat. In Ziffer 12 des Mantelvertrages ist ausdruecklich klargestellt, dass alle unter diesen Vertrag fallenden Anlagen treuhaenderisch fuer das OKH. verwaltet werden. Er verweist auf die bezueglich der reichseigenen Anlagen bestehenden strengen Geheimhaltungsbestimmungen, die auch bezueglich der I.G. galten und es ausschlossen, dass die I.G. ueber diese Anlagen informiert wurde. Diese Geheimhaltungsverpflichtungen gingen soweit, dass beispielsweise der Besuch eines Vorstandsmitgliedes der I.G. auf einer der Fabriken der Verwertchemie nur mit besonderer Genehmigung des Heereswaffenamtes oder des oertlichen General-Kommandos haette erfolgen koennen, ein Vorgang, der im uebrigen nie praktisch geworden ist.

Dabei sei hier der Vollstaendigkeit halber noch darauf hingewiesen, dass bezueglich der im Zusammenhang mit dem Bau der Montananlagen erforderlichen geldlichen Aufwendungen eine Einschaltung der I.G. und insbesondere des T.L., schon deshalb nicht in Frage kam, weil die dafuer notwendigen Mittel

in weitem Umfang vom deutschen Reich zur Verfügung gestellt wurden. Demzufolge hat auch der Zeuge Struss in seiner eidesstattlichen Erklärung vom 30.8.1947 (Bew. 391, NI-9487, Buch 15, engl. S. 65, deutsche S. 71) bestätigt, dass von der Verwert-Chemie betriebene Neubauten niemals über den T.E. gelaufen sind.

Auch auf einem anderen Gebiet zeigt sich die von den Reichsbehörden geforderte Distanzierung.

Wie sich aus der Erklärung Schindler (Vert.Bew. 8, D.-G.-Dok. 8, D.-G.-Dok.Buch I, S. 31) in Verbindung mit der eidesstattlichen Erklärung von Franz Anton Gierlich vom 19.12.1947 (Vert. Bew. 15, D.-G.-Dok. 15, D.-G.-Dok.Buch I, S. 78) vorletzter Absatz ergibt, erfolgten von 1.1.1937 ab die Bilanzprüfungen der Verwert-Chemie nicht mehr durch die Chemie Revisions- und Treuhand G.m.b.H., Berlin, die die Bilanzprüfungen bei der D.-G. und den meisten ihrer Tochtergesellschaften auch für die Jahresabschlüsse ab 1937 durchführte, sondern durch die Deutsche Revisions- und Treuhand A.G., der von den Reichsstellen die Bilanzprüfungen bei solchen Gesellschaften übertragen waren, die sogenannte Montananlagen betrieben. Dieser Wechsel der Prüfungsgesellschaft fällt praktisch zusammen mit dem Anlaufen der ersten von der Verwert-Chemie betriebenen Montanfabrik, wie sich aus dem Anklagebeweistück 2312, NI-15063, ergibt.

Die klare Trennung der von der D.-G. erbauten und dann von der Verwert-Chemie betriebenen Montanfabriken von der I.G. ergibt sich auch aus der eidesstattlichen Erklärung des Zeugen Franz Anton Gierlich vom 3.12.1947 (Vert.Bew. 9, D.-G.-Dok. 9, D.-G.-Dok.Buch I, S. 34), der dort feststellt, dass

"ebenso wie die Planung und Errichtung sowie der Betrieb der Montanfabriken auch der Abschluss

der darauf bezueglichen Vertraege selbstaendig durch die D.-G. bzw. Verwert-Chemie erfolgte, ohne dass die I.G. darueber unterrichtet wurde. Die Geheimhaltungsbestimmungen (siehe z.B. Par. 14 des "Antelvertrages vom 4.3.1940) gestatteten eine Vorlage solcher Vertraege bei der I.G. nicht,"

wahrend im uebrigen die wichtigsten Vertraege der D.-G. als einer Konzerngesellschaft der I.G. zur Pruefung auf Kollisionsmoeglichkeiten der I.G. Vertragszentrale uebermittelt wurden.

Im Kreuzverhoer des Zeugen Schmidt am 30.4.1948 hat die Anklagebehoerde in der offenbaren Absicht, diese Bekundung des Zeugen Gierlichs zu widerlegen und gleichzeitig eine Unter- richtung der I.G. ueber die Geschaeftsvorgaenge bei der Ver- wert-Chemie darzutun, Dr. Schmidt das Anklagebeweisstueck 353, NI-5685, (Buch 13, engl. S. 53, deutsche S. 65) vorgehalten. (Engl. Prot.-S. 13 124-26, deutsche Prot.-S. 13 328-31).

Im Wiederverhoer der Verteidigung am 6.5.1948 (engl. Prot.S. 13 676 - 78, deutsche Prot.-S. 13 954 - 56) hat der Zeuge Schmidt ganz eindeutig klargestellt, dass sich die damalige Unterhaltung auf rein juristische Fragen des Schemas beschränkte, nach welchem die Verträge zwischen dem Reich und den die Mon- tananlagen betreibenden Gesellschaften aufgebaut waren, und dass in dieser Unterhaltung den Vertretern der I.G. mit keinem Wort Kenntnis gegeben worden ist von Einzelheiten der Taetigkeit der Verwert-Chemie auf dem Ruestungsgebiet, wie Produktion, Umsatze, Anlagen usw.. Der Zeuge hat ferner darauf hingewiesen, dass schon aus dem Datum dieser Notiz Januar 1939 hervorgeht, dass bis

D.A.G.

zu diesem Zeitpunkt die I.G. nicht einmal Kenntnis davon gehabt hat, in welchem Vertragsverhaeltnis die Verwert-Chemie zu den Reichsbehoerden stand.

Schliesslich sei zur Abrundung des Bildes darauf hingewiesen, dass die Taetigkeit der Verwert-Chemie ihrer Muttergesellschaft, naemlich der D.G., keinerlei finanzielle Vorteile eingebracht hat, wie der Zeuge Dr. Grille in seiner eidesstattlichen Erklaerung vom 2.12.1947 (Vert.Bew. 16, D.G.-Dok. 16, D.G.-Dok.Buch I, S. 83) im einzelnen nachweist.

5. Die Unterrichtung der I.G. und insbesondere der Ange-
klagten Schmitz und Gajewski ueber die Taetigkeit
der Verwertchemie.

Da auch die Anklagebehoerde selbst nicht behauptet, dass die Verwert-Chemie ihrerseits eine Berichterstattung an die I.G. vorgenommen hat, so bleibt hier nur zu untersuchen, ob und in welchem Ausmass ueber die geschaeftliche Betaetigung der Verwert-Chemie von der D.L.G. berichtet worden ist. Aus Gruenden der besseren Uebersicht wird dabei die Eroerterung nach den gleichen Gesichtspunkten aufgegliedert, wie sie auf Seite 19 dieses Schlussbriefs der Darstellung der Unterrichtung der I.G. ueber die Taetigkeit der D.L.G. zugrunde gelegt worden ist.

a) Berichterstattung an die Zentral-Finanzverwaltung
 der I.G..

Der Zeuge Schmidt konnte keine verwendbaren Angaben darueber machen, ob in den unter dem Rubrum "Finanzplan" an die Zentral-Finanzverwaltung uebersandten Berichten (siehe S. 19 - 20 dieses Trial-Briefs) auch die entsprechenden Angaben bezueglich der Verwert-Chemie enthalten waren. Die Anklagebehoerde ist also, da sie auch keinen sonstigen Beweis erbracht hat, insofern beweisfaellig geblieben. Sie hat dann aber den Versuch unternommen, aus dem Zeugen Schmidt auf anderem Wege eine Aussage ueber die Unterrichtung der I.G. Berlin NW 7, also der Zentral-Finanzverwaltung, herauszubringen. Da die Art des Vorgehens der Anklagebehoerde in diesem Punkt typisch ist fuer ihre Behandlung dieses Fragenkomplexes, soll dieses Vorgehen trotz der sonstigen Unrichtigkeit dieses Punktes hier behandelt werden. Nachdem der Zeuge Schmidt auf die Frage, ob nicht die D.L.G. bereits im Jahre 1937 die I.G., insbesondere die I.G. Berlin NW 7 ueber die

Tätigkeiten der Verwert-Chemie in Kenntnis setzte, nicht zur Zufriedenheit des Anklagevertreters geantwortet hatte, wurde ihm das Anklagebeweisstueck 2340, NI-15215, (eidesstattliche Erklärung Franz Anton Gierlichs vom 21. April 1948) vorgelegt und er zunächst gefragt, ob er etwas sagen koenne, worum es sich bei diesem "Briefwechsel" (tatsaechlich ist nur von einem Brief die Rede) handele. Nachdem der Zeuge diese Frage verneint hatte, wurde an ihn die Frage gerichtet:

"Frischt dieses Dokument Ihr Erinnerungsvermoegen dahingehend auf, dass in diesem Jahr zwischen Dynamit I.G. und Farben ueber die Tätigkeit der Verwert-Chemie ein umfangreicher Briefwechsel stattfand?"
(Unsere Unterstreichung).

Auf eine verneinende Antwort des Zeugen kommt die Frage

"Sie meinen also, dass das Dokument Ihr Erinnerungsvermoegen nicht auffrischt?"

worauf der Zeuge nochmal wiederholte, dass dies nicht der Fall sei. Tatsaechlich kann, wie auch der Anklagebehoerde aufgrund ihrer eigenen Feststellungen durchaus bekannt war, von einem solchen umfangreichen Briefwechsel ueberhaupt nicht die Rede sein. Aus der eidesstattlichen Erklärung Franz Anton Gierlichs vom 9. Mai 1948 (Vert. Bew. 283, D.I.G.-Dok. 36, Nachtrag zum D.I.G.-Dok. Buch III, S. 35) ergibt sich, dass in der Zeit vom 1. Juli 1936 bis 31. Dezember 1937 neben dem in dem Anklagebeweisstueck 2340 behandelten Brief vom 14. Mai nur 2 weitere Briefe an I.G.-Stellen gerichtet wurden, die nach dem Betreff ueberhaupt mit der Verwert-Chemie in Zusammenhang stehen. Der eine Brief ist an die Zentral-Steuerabteilung der I.G. gerichtet und behandelt eine steuerliche Frage, der zweite an die Zentral-Finanzverwaltung und behandelt die staatlich angeordnete Ausfuhrfoerderungsumlage. Der Zeuge stellt abschliessend folgendes fest:

"Generell moechte ich erklæren, dass auch in den spæteren Jahren der briefliche Kontakt der D.G. mit der I.G. ueber die Verwert-Chemie nicht intensiver gewesen ist, als in der von mir nachgeprueften Zeit. Darueber hinaus kann ich feststellen, dass soweit ueberhaupt eine Fuehlungnahme zwischen der D.G. und der I.G. ueber die Verwert-Chemie stattfand, es sich - wie auch in den beiden vorstehend behandelten Faellen - jeweils um die Behandlung einer konkreten Einzelheit handelte, bei der wir fuer unser eigenes Vorgehen von den Erfahrungen der zustaendigen I.G.-Abteilungen auf dem gleichen Gebiet Nutzen ziehen wollten.

Ich kann mit Bestimmtheit erklæren, dass ein Briefwechsel zwischen dem Vorstand der D.G. und der I.G., der eine Unterrichtung ueber die Betaetigung der Verwert-Chemie auf dem Ruestungsgebiet zum Gegenstand hatte, nicht stattgefunden hat."

- b: Berichterstattung an den Aufsichtsrat und insbesondere die Angeklagten Schmitz und Gajewski in ihrer Eigenschaft als Aufsichtsratsmitglieder.

In seiner eidesstattlichen Erklærung vom 1.12.1947 (Vert. Bew. 7, D.G.-Dok.7, D.G.-Dok.Buch I, S. 26) stellt der Zeuge Schmidt fest:

"Ueber die Verwert-Chemie wurde in den Aufsichtsrats-sitzungen ueberhaupt nicht gesprochen."

Bezuglich der Vierteljahresberichte ab 1938 ergibt sich aus den Anklagedokumenten NI-15163 und NI-15162, dass in den Umsatzaufstellungen auch die Militarialieferungen, und

zwar einschliesslich derjenigen der Konzerngesellschaften, also der Verwert-Chemie, enthalten waren. Es muss hier darauf hingewiesen werden, dass beide Dokumente nur Auszüge aus Anschriften darstellen, während die Anklagebehörde die in ihnen erwähnten Anlagen, die allein ein Urteil ueber das Ausmass der Unterrichtung ermöglichen wurden, nicht beigelegt hat. Der Zeuge Schmidt hat im Rueckverhoer durch die Verteidigung am 6.5.1948 (engl. Prot.-S. 13 665/66, deutsche Prot.-S. 13 943) dazu bekundet, dass er ohne es genau zu wissen, annahm, dass sie zusammen mit dem zivilen Umsatz in einer Zahl angegeben wurden. Aber selbst wenn sie getrennt angegeben waren, so handelte es sich in jedem Fall um ganz globale Zahlenangaben und es trifft auf sie darueber hinaus die Feststellung des Zeugen Gierlichs in seiner eidesstattlichen Erklaerung vom 9. Mai 1948 (Vert. Bew. 285, D.-G.-Dok. 38, Nachtrag zum D.-G.-Dok. Buch III, S. 42) zu,

" dass diese Umsatzuübersichten lediglich vertnaessig Umsatzzahlen enthielten, so dass aus ihnen die Umsatze der Menge nach weder insgesamt noch fuer die Produkte im einzelnen entnommen werden konnten."

Dabei muss erneut betont werden, dass die Umsatzzahlen selbst, wenn eine solche Aufgliederung darin enthalten waere, fuer sich allein, insbesondere fuer einen Laien auf dem Pulver- und Sprengstoffgebiet keinerlei Rueckschluesse ermöglicht haetten.

Aus dem Dokument NI-15162 ergibt sich, dass erstmalig mit den am 2. Oktober 1939, also nach Kriegsausbruch uebersandten Aufstellungen fuer das 2. Quartal 1939 die Belog-

schaftszahl der Verwert-Chemie gesondert von der Belegschaftszahl der uebrigen Anschlussgesellschaften aufgefuehrt ist. Der hierzu von der Anklagebehörde und der Verteidigung vernommene Zeuge Dr. Schmidt (engl. Prot.-S. 13 152, deutsche Prot.-S. 13 440 u. engl. Prot.-S. 13 672/74, deutsche Prot.-S. 13 950/52) hat aus positivem Wissen nichts ueber die Gruende dieser Aufgliederung der Belegschaftszahlen sagen koennen. Seine Vermutung, dass es mit Ruecksicht darauf geschah, dass die Belegschaftszahl der Verwert-Chemie im Krieg ploetzlich stark anstieg und die Absicht verfolgt wurde, durch die Aufgliederung ein klareres Gesamtbild zu geben, mag hier als richtig unterstellt werden. In jedem Fall gilt aber das, was hinsichtlich der Umsatzzahlen gesagt wurde, naemlich dass sie ohne weitere Informationen fuer einen Laien kein Urteil ermoeglichten, in noch verstaerktem Masse fuer die Belegschaftszahlen, ganz abgesehen davon, dass diese Unterrichtung erst nach Kriegsausbruch erfolgte, wo der Empfaenger des Berichtes erst recht keinerlei Einwirkungsmoeglichkeiten mehr hatte.

c: Die sonstige Unterrichtung des Angeklagten Schnitz.

Die Tatsache, dass eine Unterrichtung des Angeklagten Schnitz nach Art des Dokuments NI-15260, Anklagebeweisstueck 2341 erst ab 1.6.1944 stattgefunden hat (siehe Seite 29 dieses Schlussbriefs), macht jede Stellungnahme ueberfluessig.

d: Die Bilanzpruefungsberichte der Verwert-Chemie und der D.-G.

Der Zeuge Gierlich stellt in seiner eidesstattlichen Erklaerung vom 19.12.1947 (Vert.Bew. 15, D.-G.-Dok. 15, D.-G.-Dok. Buch I, S. 78) fest, dass seines Wissens die Bilanzpruefungsberichte der Verwert-Chemie fuer die Zeit ab 1.1.1937 keiner

Stelle der I.G. mehr zur Kenntnis gebracht wurden. Der Zeuge Schmidt hat diese Tatsache in seiner eidesstattlichen Erklärung vom 1.12.1947 (Vert.Bew. 7, D.L.G.-Dok. 7, D.L.G.-Dok.Buch I, S. 26) hinsichtlich der Angeklagten Schmitz und Gajewski noch einmal ausdrücklich bestätigt. Die Anklagebehörde, die diese Feststellung nicht entkräften konnte, hat nun versucht, den Nachweis von der Kenntnis gewisser Geschäftsvorgänge bei der Verwert-Chemie dadurch zu führen, dass sie Auszüge aus den Berichten über die Bilanzprüfung der Verwert-Chemie für 1936, Dokument NI-15063, Bew. 2312, und der D.L.G. für 1938, Dokument NI-15062, Bew. 2311, vorgelegt hat. Gerade diese Auszüge beweisen aber die Richtigkeit der vorstehend wiedergegebenen Darlegungen der Zeugen Schmidt und Gierlich, dass nämlich die bestehenden Geheimhaltungsvorschriften eine Berichterstattung, die diesen Namen wirklich verdient, nicht zulassen.

In dem vorerwähnten Bilanzprüfungsbericht der Verwert-Chemie für 1936 ist die hier in Rede stehende Geschäftstätigkeit dieser Gesellschaft mit einem, und zwar dem folgenden Satz erwähnt:

"Seit Anfang 1937 befasst sie (die Verwert-Chemie) sich mit der Herstellung chemischer Produkte in den ihr durch eine Reichsstelle verpachteten Fabrikationsanlagen in Doernitz."

Allgemeiner und ausweichender und damit nichtssagender kann eine Berichterstattung wohl kaum gehalten sein. Für die Zeit ab 1.1.1937 hat die I.G. - wie gesagt - Bilanzprüfungsberichte der Verwert-Chemie nicht mehr erhalten.

Im Gegensatz zu dieser Tatsache ist in der eidesstattlichen Erklärung Otto Heilbrunn (Bew. 1816, NI-12740) unter Ziffer 7

die Behauptung aufgestellt, dass der I.G. auch der Bilanzprüfungsbericht der Verwert-Chemie fuer 1937 noch zugegangen sei. Zum Beweis fuer diese Behauptung bezieht sich der Zeuge Heilbrunn auf die Anlage F zu seiner Erklaerung, die jedoch keinerlei Beweis fuer seine Behauptung, die wie oben bereits dargelegt, auch unrichtig ist, enthaelt.

Auch der von der Anklagebehoerde als Beweismaterial vorgelegte Bilanzprüfungsbericht der D.L.G. fuer 1938 erwachnt - obwohl er mehr als 100 Seiten umfasst - die Verwert-Chemie wieder nur mit einem Satz, er lautet:

"Ausserdem betreibt die Gesellschaft m. b. H. zur Verwertung chemischer Erzeugnisse, deren Stammkapital sich ganz im Besitz der D.L.G. befindet, als Treuhander fuer die Verwertungsgesellschaft fuer Montan-Industrie G. m. b. H. Berlin folgende Fabriken:

Dosnitz	ab 1.4.36,
Guesen	ab 1.7.38,
Hessisch-Lichtenau	ab 1.6.38,
Clausthal-Zellerfeld ab 1.1. bzw.	1.4.39,
Ueckermuende	ab 1.1. bzw. 1.4.39."

Dabei ist charakteristisch, dass unmittelbar vorher in diesem Bericht die D.L.G-eigenen Werke aufgefuehrt und bei jedem Werk die dort hergestellten Erzeugnisse wenigstens nach Militaria oder ziviler Produktion - allerdings auch ohne Angabe von Einzelheiten - aufgliedert werden, waehrend hinsichtlich der Verwert-Chemie nicht einmal das geschehen ist. Die Verteidigung verzichtet darauf, sich mit den direkt quaelenden Behauptungen der Anklagebehoerde auseinanderzusetzen, die im Kreuzverhoer des Zeugen Schmidt versucht hat, durch verallgemeinernde Fragen eine fuer sie

verwertbare Aussage in diesem Punkt zu erzielen. Sie ist der Ansicht; dass sowohl die Bilanzprüfungsberichte, als auch das auf diese bezueglich Vernehmungsprotokoll des Zeugen Schmidt fuer sich selbst sprechen.

Wie sich die im vorstehenden behandelte "Berichterstattung" bei der I.G. praktisch ausgewirkt hat, ergibt sich aus den Erklarungen des Zeugen Dr. Struss in seiner Vernehmung vom 13. April 1948. In dieser Vernehmung wurden die vorgenannten beiden Auszuege aus den Bilanzprüfungsberichten dem Zeugen zur Auffrischung seines Gedachtnisses von der Anklagebehoerde vorgelegt, nachdem der Zeuge erklart hatte:

"Ich habe mit Bewusstsein den Namen der Verwert-Chemie erst in meiner Taetigkeit im Control-Office der I.G. nach dem Kriege gehoert."

(Engl. Prot.-S. 11 326, deutsche Prot.-S. 11503).

Trotz dieses Verhaltes zur Auffrischung seines Gedachtnisses bekundet der Zeuge im weiteren Verlauf der Vernehmung (engl. Prot. S. 11 327/28, deutsche Prot.-S. 11 505):

"..... Der Name Verwert-Chemie ist nicht in mein Gedachtnis uebergegangen und nun muessen Sie ja bedenken, dass der Name Verwert-Chemie damals keinerlei Bedeutung hatte, denn kein Mensch hat mir jemals diesen Namen erklart und niemand hat mir gesagt, wie und in welcher Form diese Gesellschaft gegruendet ist Ich muss wiederholen, dass ich erst mit Bewusstsein nach dem Kriege von dem Umfang der Verwert-Chemie und diesen abgekuerzten Namen Verwert-Chemie gehoert habe."

Auch nach Vorlage weiterer Dokumente, die in offenbar zusammengefasster Form u. a. auch Umsatzzahlen der Verwert-Chemie enthalten, bleibt der Zeuge dabei (engl. Prot.S. 11 333/34, deutsche Prot.-S. 11 512):

"Ich kann mich eben ueberhaupt vor dem Kriege an den Namen "Verwert-Chemie" nicht mehr erinnern aus dem sehr einfachen Grunde, weil er fuer mich ueberhaupt kein Begriff war"

"Also jedenfalls muss ich bei meiner Behauptung bleiben, dass mir nicht bewusst gewesen ist, um was es sich hier handelt."

Diese Bekundungen des Zeugen Dr. Struss sind umso bedeutsamer als der Zeuge an zentraler Stelle Vorarbeiten fuer wichtigste Entscheidungen der I.G. leistete und ihn nach seiner Bekundung (engl. Prot.-S. 11 329, deutsche Prot.S. 11 506) fuer diese Taetigkeit jaehrlich 250 Bilanzpruefungsberichte zugeleitet wurden. Es ist eindeutig ersichtlich, dass bei der I.G. trotz gelegentlicher Hinweise keine Kenntnis von der allgemeinen Bedeutung, die die Verwert-Chemie auf dem Ruestungsgebiet hatte, bestand, erst recht aber keine Kenntnis ueber Art, Umfang und Verwendungszwecke der Produktion im einzelnen.

Die Anklagebehoerde hat eine eidesstattliche Erklaerung von Helmut Deichfischer vom 11. Juni 1947 (Bew. 711, NI-10005, Buch 37, engl. S. 127, deutsche S. 136) vorgelegt. In dieser Erklaerung hat der Zeuge nachtraeglich aufgrund der ihm im Control-Office der I.G. zugaengig gemachten Unterlagen der D.A.G. eine Aufstellung ueber die Gesamtumsaetze der Verwert-Chemie von 1936 - 1943 gefertigt. Ab-

gesehen davon, dass diese Unterlagen der IG. und insbesondere einem der Angeklagten in dieser Form nie zur Kenntnis gekommen sind, ist festzustellen, dass diese Aufstellung höchstens geeignet gewesen wäre, etwa vorhandene Bedenken über die Tätigkeit der Verwert-Chemie zu zerstreuen, keinesfalls aber, solche zu wecken. Im letzten Friedensjahr 1938 belief sich nach dieser Aufstellung der Gesamtumsatz der Verwert-Chemie auf rund 33 Millionen Reichsmark, während er im Jahre 1943 rund 631 Millionen Reichsmark erreichte. Der Umsatz im Jahre 1938 belief sich also auf etwa 5 % des Umsatzes von 1943 und stieg erst im Kriege, und zwar hauptsächlich ab 1941 stark an.

Um zu einer wirklich zutreffenden Bewertung der der I.G. zur Kenntnis gekommenen Informationen über die Tätigkeit der Verwert-Chemie zu kommen - praktisch handelte es sich im günstigsten Fall um einige globale wertmässige Umsatzzahlen, um die Namen einiger Fabriken und nach Kriegsausbruch um die Belegschaftszahlen - muss man sich vor Augen halten, dass das Schwergewicht bezüglich der Montanfabriken jedenfalls vor dem Krieg auf der Bauseite, d. h. bei der Errichtung der Anlagen und nicht bei der Produktion lag. Über das, was sich bezüglich der dann später von der Verwert-Chemie betriebenen Neubauten abspielte, konnte die I.G. oder konnten einzelne der Angeklagten, auch abgesehen davon, dass die Mittel durch das Reich zur Verfügung gestellt wurden/^{keinerlei} Kenntnis erhalten, da dabei sowohl auf der maschinellen und apparativen als auch auf der baulichen Seite Unternehmerfirmen eingeschaltet wurden. Die Tätigkeit der D.-G. lässt sich in diesem Zusammenhang am besten mit der eines Ing. Büros vergleichen. Die Anklagebehörde hat keinerlei Nachweis erbracht, dass sich diese Tätigkeit in der Berichterstattung der D.-G.

an die I.G. in irgendeiner Weise niedergeschlagen hat und dass auf diesem Wege eine Information der Angeklagten moeglich gewesen waere.

Abgesehen davon haette aber selbst eine vollstaendige Berichterstattung ueber die jaehrlichen Ausgaben auf dem Neubaugebiet nicht einmal fuer den Fachmann auch nur einigermaßen zuverlässige Rueckschluesse ermoeeglichen koennen, erst recht also nicht fuer die nicht sachverstaendigen Angeklagten.

Es ist moeglich, je nach den technischen und gelaendewessigen Voraussetzungen, je nach der mehr oder weniger stabilen Bauweise unter Beruecksichtigung von Gesichtspunkten des Luftschutzes und der Tarnung, je nach den oertlich gegebenen Schwierigkeiten der Frischwasserversorgung, der Abwasserbeseitigung und des Bahnanschlusses, nach den Untergrundverhaeltnissen usw. dieselbe Kapazitaet in dem einen Fall mit einem Bruchteil der Kosten wie in einem anderen Fall zu erstellen. Auch werden die Kosten sehr stark dadurch bedingt, wie weit man die Herstellung der Vorprodukte in die betreffende Fabrik mit einbezieht oder nicht. Jedenfalls ist es aus allen diesen Gesichtspunkten vollkommen unmoeeglich, aus bestimmten Geldbeträgen nun etwa zu schliessen, welche Kapazitaet dafuer erstellt wurde, zumal ja noch nicht einmal das Produkt, um das es sich handelte, bekannt gewesen waere. Genau so wenig laesst etwa die Bilanz eines selbststaendigen Ing. Bueros derartiges erkennen, obwohl eine solche immer noch mehr Klarheit geben wuerde als der Fall der D.G., wo die Planungstaetigkeit sich in dem groesseren Gesamtrahmen abspielte.

In den vorangegangenen Darlegungen ist bereits mehrfach auf den Umstand hingewiesen worden, dass neben den Gruenden, die

im tatsächlichen organisatorischen Verhältnis der D.L.G. zur I.G. begründet lagen, auch die Geheimhaltungsvorschriften eine Unterrichtung der I.G. und insbesondere der Angeklagten über die Betätigung der D.L.G. und ihrer Tochtergesellschaften auf dem Gebiete der Erzeugung von militärischen Sprengstoffen und Pulver unmöglich machten, die ihnen eine Übersicht über dieses Gebiet gewahrt hätte. Diese Tatsache bedarf einer besonderen Unterstreichung. Die Verteidigung hat deshalb in der eidesstattlichen Erklärung des Zeugen von Muench vom 13.3.1948 (Vert.Bew. 167, D.L.G.-Dok. Nr. 35, D.L.G.-Dok. Buch III, S. 24) eine grundsätzliche Stellungnahme zu den in Deutschland geltenden Geheimhaltungsvorschriften und ihren Auswirkungen in der Praxis vorgelegt. Der Zeuge von Muench war von 1935 bis zum deutschen Zusammenbruch Leiter einer besonderen Gruppe bei dem Amt Ausland-Abwehr III des Oberkommandos der Wehrmacht, die in Gutachten für Gerichte und Behörden nach der objektiven Seite Stellung zu der Frage zu nehmen hatte, ob durch eine Handlung eine Verletzung der Geheimhaltungsbestimmungen eingetreten war. Diese Gruppe war die einzige Stelle in Deutschland, die derartige militärische Gutachten abgeben durfte. Das besondere Sachverständnis dieses Zeugen für die von ihm behandelten Fragen dürfte danach ausser Zweifel stehen. Der Zeuge schildert in seiner gutachtlichen Stellungnahme ausführlich die Geheimhaltungsbestimmungen und deren praktische Auswirkungen. Er kommt zu folgendem Schluss:

"Aufgrund meiner Vertrautheit mit dem im vorstehenden behandelten Fragenkomplex halte ich es für ausgeschlossen, dass der Vorstand eines Grossunternehmens

wie der I.G. Farbenindustrie Aktiengesellschaft ueber die Vorgaenge bei Tochter- und Enkelgesellschaften, die unter Geheimhaltungsschutz standen, weil militaerische Dienststellen an ihnen interessiert waren, eingehende Kenntnis erhielten, weil damit gegen die Geheimhaltungsvorschriften verstossen worden waere.

Das Gleiche hat aber auch fuer Vorgaenge in den Gesellschaften selbst zu gelten, da - wie schon angedeutet - auch die einzelnen Vorstandsmitglieder ihren Kollgen gegenueber nur dann ueber besonders geheimzuhaltende Massnahmen sprechen durften, wenn auch diese dienstlich mit deren Durchfuehrung unbedingt zu befassen waren. Nur dieser Gesichtspunkt war fuer das zulaessige Ausmass der Unterrichtung massgebend, nicht dagegen Verpflichtungen, die sich aus anderen Aspekten, wie z. B. aktienrechtlichen Vorschriften, der Geschaeftsordnung des Vorstandes oder des Aufsichtsrates oder aehnlichen Bestimmungen ergaben, da die Geheimhaltungsvorschriften allem anderen vorgingen."

6. Die Rolle des D.-I.-G.-Konzerns im Rahmen der Deutschen

 Pulver- und Sprengstoffproduktion und das Verhaeltnis

 der Produktion des D.-I.-G.-Konzerns fuer militaerische

 Zwecke zu der Erzeugung fuer zivile Zwecke:

Aus den bisherigen Darlegungen geht hervor, dass die I.-G. bzw. die Angeklagten, insbesondere Schmitz und Gajewski, keinerlei Einfluss verwaltungsmaessiger oder technischer Art auf die D.-I.-G. hinsichtlich ihrer Betaetigung auf dem Gebiet der Wiederbewaffnung ausuebten und dass sie darueber hinaus auch keine solche Kenntnis von der Aktivitaet der D.-I.-G. auf diesem Produktionsgebiet hatten, die ausgereicht haette, um ihnen einen auch nur annaehernd vollstaendigen Ueberblick zu gewaehren. Bei dieser Sachlage ist die Auffassung der Anklagebehoerde ungerechtfertigt, dass die Angeklagten aufgrund einer genauen Kenntnis der Taetigkeit der D.-I.-G. im Rahmen der Wiederbewaffnung zu dem Schluss kommen mussten, dass die Deutsche Regierung sich mit dem Plan eines Angriffskrieges trug.

Wenn trotzdem im Nachfolgenden das Beweismaterial der Verteidigung ueber den wirklichen Umfang dieser Taetigkeit und ihr Verhaeltnis zur deutschen Gesamtproduktion auf dem Pulver- und Sprengstoffgebiet gewuerdigt wird, so geschieht dies, um die Unrichtigkeit des von der Anklagebehoerde vorgelegten Materials darzutun und nachzuweisen, dass auch objektiv gesehen, die Betaetigung der D.-I.-G. auf diesem Gebiet sich in viel bescheidenen Grenzen hielt, als die Anklagebehoerde behauptet. Es soll damit ferner dargetan werden, dass sowohl vor wie waehrend des Krieges das Schwergewicht der D.-I.-G.-Produktion auf

dem Gebiete der zivilen Sprengstoffe und ihrer sonstigen zivilen Erzeugung z. B. Kunststoffe lag.

Der Zeuge Heinrich Schindler hat in seinen eidesstattlichen Erklärungen vom 19.12.1947 (Vert.Bew. 13, D.L.G.-Dok. 13 I u. II, D.L.G.-Dok.Buch I, S. 59) das sich danach ergebende zahlenmaessige Gesamtbild entwickelt. Der Zeuge stellt in seiner Erklärung Dokument D.L.G.-13 I die Gesamtproduktion an militaerischen Sprengstoffen in Deutschland in der Zeit von 1930 an der Erzeugung der D.L.G. gegenueber und kommt abschliessend zu folgendem Ergebnis:

"Von der Gesamterzeugung von 1930 bis Kriegsende von ca. 1.080.000 to entfallen auf die Zeit von 1930 bis Kriegsbeginn ca. 180.000 to (16,7 %),

waehrend die Erzeugung von Kriegsbeginn bis Ende ca 900.000 to (83,7 %) betrug.

Auf die D.L.G. entfallen von der Gesamterzeugung 1930 bis Kriegsende ca 102.000 to (9,4%)"

Wenn man statt der reinen militaerischen Sprengstoffe die Gemische nimmt, so wie sie tatsaechlich zum Fuellen der Munition gebraucht wurden, so ergibt sich folgendes:

"Von der Gesamtfuelleistung von 1930 bis Kriegsende von ca. 1.700.000 to entfallen auf die Zeit von 1930 bis Kriegsbeginn ca. 85.000 to (5%),

während die Erzeugung von Kriegsbeginn
bis Ende ca. 1.615.000 to. (95%)
betrug.

Auf die D.L.G. entfallen von der
Gesamterzeugung 1930 bis Kriegs-
ende ca. 6000 to. (0.35%)

Die nach den gleichen Gesichtspunkten im Dokument D.L.G. 13-II
aufgemachte Uebersicht ueber die Gesamtproduktion an mili-
taerischen Pulver in Deutschland von 1930 bis 1944 fuehrt zu
folgendem Ergebnis:

"Von der Gesamterzeugung von 1930 bis 1944
von ca. 1.040.000 to entfallen auf die Zeit
von 1930 bis Kriegsbeginn ca. 190.000 to (18.3%),
während die Erzeugung von Kriegsbeginn
bis Ende 1944 ca. 850.000 to (81.7%)
betrug.

Auf die D.L.G-Gruppe entfallen von der Gesamt-
erzeugung 1930 bis 1944 ca. 112.000 to (10.8%)."

(Siehe in diesem Zusammenhang auch die eidesstattliche Erklaerung
Schindler vom 24.2.1948 (Vert.Bew. 161, D.L.G-Dok. 29, D.L.G-Dok.Buch
III, S. 7), in der er im einzelnen sein Sachverstaendnis nach-
weist, auf Grund dessen er die beiden eidesstattlichen Er-
klaerungen D.L.G-Dok. 13-I u. II abgegeben hat.)

In seiner eidesstattlichen Erklaerung vom 19.12.1947 Vert.Bew. 12,
D.L.G-Dok. 12, D.L.G-Dok.Buch I, S. 54) stellt der gleiche Zeuge
die Produktion an zivilen Sprengstoffen der Erzeugung von mi-
litaerischen Sprengstoffen und Pulver innerhalb der D.L.G und
ihrer Tochtergesellschaften mit Mehrheitsbeteiligung (ohne reichseige-
ne Betriebe) gegenueber. Es ergibt sich, dass die Erzeugung an

D.A.G.

zivilem Sprengstoff selbst im Hoehepunkt des Krieges mengen-
maessig die Erzeugung von militaerischem Sprengstoff und
Pulver zusammengekommen uebertraf und dass im Verlaufe des
Krieges der zivile Anteil absolut und prozentual angestiegen ist.

7. Das Verhaeltnis der I.G. zu den Firmen Wasag und

Wolff & Co. sowie zu deren Tochtergesellschaften

Sprengchemie und Eibia.

Die Anklagebehoerde hat in dem Kreuzverhoer des Zeugen Heinrich Schindler am 23.4.1948 (engl. Prot.-S. 1236ff., deutsche Prot.S. 12 563 ff.) ueber die in Punkt 6 dieses Schlussebriefs behandelten eidesstattlichen Erklaerungen betreffend die Produktion der D.L.G. auf dem Gebiet der militaerischen Sprengstoffe und Pulver den Zeugen eingehend darueber befragt, welche Produktionszahlen und welche Werke er seiner Aufstellung zugrunde gelegt habe. Sie hat dann am 28.4.1948 (engl. Prot.-S. 12717, deutsche Prot.-S. 12 923 ff.) dem Zeugen insbesondere die Frage gestellt, welcher Prozentsatz sich bezueglich des Anteils an der gesamtdeutschen Produktion von militaerischen Sprengstoffen und Pulver ergebe, wenn man die Produktion der D.L.G., der Wasag und der Firma Wolff & Co. und ferner die Produktion der von deren Tochtergesellschaften Verwert-Chemie, Sprengchemie und Eibia betriebenen reichseigenen Werke zusammenrechnet. Diese Art der Befragung ist ein Spiel mit Zahlen und fuer den vorliegenden Prozess voellig bedeutungslos. Ihr Zweck kann nur darin bestehen, durch die sachlich voellig unberechtigte Zusammenrechnung von Produktionszahlen verschiedener Erzeugergruppen ein Bild ueber die Beteiligung des I.G.-Konzerns an der Pulver- und Sprengstoffherzeugung in Deutschland zu geben, das zwar ausserordentlich hohe Prozentsaetze ergibt, aber sachlich unberechtigt ist. Es ist die Theorie der Verteidigung, dass nach den Grundsuetzen des IAT nur solche Tatbestaende den Angeklagten im Zusammenhang mit dem Anklagepunkt I zur Last gelegt werden koennen, die ihnen bekannt waren

und in den Bereich ihrer persönlichen Verantwortung fallen. Bezueglich der Verwert-Chemie ist bereits unter Ziffer 4) und 5) dieses Schluss-briefs eingehend dargetan worden, dass diese Voraussetzungen bezueglich der genannten Gesellschaft nicht zutreffen. Hinsichtlich der Firmen Wasag und Wolff & Co. hat die Anklagebehörde auch nicht den geringsten Versuch unternommen darzutun, dass diese Gesellschaften von der I.G. in irgendeiner Beziehung bezueglich ihrer geschaeftlichen Betätigung abhaengig waren oder auch nur einer Kontrolle der I.G. oder einzelner der Angeklagten unterlagen. Sie hat ferner keinerlei Beweis dafuer angetreten, dass die geschaeftlichen Vorgaenge innerhalb dieser Gesellschaften der I.G. als solcher oder den Angeklagten auch nur zur Kenntnis gekommen sind.

Dagegen hat der Zeuge Struss im Kreuzverhoer der Verteidigung waehrend der Sitzung vom 9.10.1947 (engl. Prot.-S. 1926, deutsche Protokoll-Seite 1915) erklart, dass die I.G. bei der Wasag nicht den geringsten technischen Einfluss hatte, dass zu ihr ueberhaupt vielmehr jede technische Verbindung fehlte.

Hinsichtlich der Firma Wolff & Co. gilt diese Feststellung des Zeugen Struss in mindestens dem gleichen Umfang ganz abgesehen davon, dass diese Firma selbst in dem hier in Rede stehenden Zusammenhang gar keine Rolle gespielt hat, da, wie sich aus den obigen Bekundungen des Zeugen Schindler im einzelnen ergibt, in den Gesamtzahlen der militaerischen Pulver- und Sprengstofferzeugung keine Produktion der Firma Wolff & Co. enthalten ist. Das gleiche gilt fuer das Verhaeltnis der D.A.G. zur Wasag und zur Fa. Wolff & Co. (siehe Aussage Schindler am 28.4.1948, engl. Prot.-S. 12 766

und S. 12 774, deutsche Prot.-S. 13 017 und S. 13 026).

Die Sprengchemie und die Eibia stehen zur Wasag bezw. zur Firma Wolff & Co. im gleichen Verhaeltnis, wie die Verwert-Chemie zur D.L.G., d. h. beide Firmen sind reine Betriebsgesellschaften, die als Treuhander des Reiches bestimmte im Reichsauftrag errichtete reichseigene Anlagen betrieben haben. Die Ausfuehrungen, die unter Ziffer 4) dieses Schlussbriefs ueber die mangelnden Einwirkungsmoeglichkeiten der D.L.G. auf die Betaetigung der Verwert-Chemie gemacht worden sind, koennen deshalb in vollem Umfang auf das Verhaeltnis Wasag-Sprengchemie und Wolff & Co./Eibia uebertragen werden. Das Gleiche gilt hinsichtlich der Geheimhaltungsverpflichtungen und der hierdurch hervorgerufenen Unmoeglichkeiten, an aussenstehende Dritte in einer Weise zu berichten, die auch nur ein ungefaehres Bild von Art und Ausmass der Betaetigung dieser Firmen vermittelt haette. Bezueglich der Zugehoerigkeit der Angeklagten Schmitz und Gajewski zum Aufsichtsrat der Fa. Wolff & Co. ist zu sagen, dass, wie bereits an dem Beispiel der D.L.G. und der Verwert-Chemie nachgewiesen, in diesem Sinne auch Aufsichtsratsmitglieder der Muttergesellschaften als aussenstehende Dritte anzusehen sind, weil auch ihnen gegenueber in vollem Umfang die Geheimhaltungspflicht bestand.

Hingewiesen sei abschliessend noch auf folgendes:

Es gab vor dem Kriege, wie sich aus der Aussage des Zeugen Schindler im Kreuzverhoer am 28.4.1948 (engl. Prot.-S. 12 766, deutsche Prot.-S. 13 017) ergibt, keine Privatperson oder Institution in Deutschland, in der sich die Kenntnis der Bautaetigkeit bei den Firmen D.L.G., Wasag, Wolff & Co. und Verwert-Chemie, Sprengchemie, Eibia oder

ihre Produktionszahlen vereinigt haette. Noch weniger waere eine solche Privatperson, oder Institution, wie etwa der I.G.-Vorstand in der Lage gewesen, auf diese Entwicklung auch nur den geringsten Einfluss zu nehmen. Die gesamte Taetigkeit wurde vom Heereswaffenamt gesteuert und nur bei ihm lief der Gesamtueberblick ueber Bautaetigkeit und Produktionszahlen auf dem Pulver und Sprengstoffgebiet zusammen, auf deren Geheimhaltung auch den in dieses Programm eingeschalteten Firmen gegenueber entscheidender Wert gelegt wurde. Bezeichnend ist in diesem Zusammenhang, dass auch ein Zeuge wie Dr. Schmidt als Vorstandsmitglied der D.G. nach seinen Bekundungen (engl. Prot.-S. 13 123, deutsche Prot.-S. 13 327) keine irgendwie nennenswerte Kenntnis ueber die Vorgaenge bei der Wasag hatte. Unter diesen Umstaenden spricht es fuer sich selbst, wenn die Anklagebehoerde im Kreuzverhoer des Zeugen Schmidt (engl. Prot.-S. 13 123 - 26, deutsche Prot.-S. 13 327 ff., insbesondere 13 329/30) den Versuch gemacht hat, die Tatsache, dass Dr. Schmidt in einer Unterhaltung mit I.G.-Juristen ueber das Montanschema am Rande die Tatsache erwaehte, dass ebenso wie die D.G. mit der Wert-Chemie nach dem Montanschema arbeitet, dies die Wasag mit der Sprengchemie tue, als eine

"Eroerterung der Taetigkeit der Wasag und der deutschen Sprengchemie mit Angehoerigen der I.G."

darzustellen. Es ist verstaendlich, wenn der Zeuge hierauf voller Entruestung geantwortet hat:

"Wenn ich in dieser Besprechung erwaeht habe, dass auch die Wasag ein solches Schema hat, so heisst das noch natuerlich nicht, dass ich mit den Herren der I.G. ueber die Wasag und ihre Tochtergesellschaft verhandelt haette."

8. Auch die vollstaendige Kenntnis der Produktionsver-
 haeltnisse auf dem Pulver- und Sprengstoffgebiet liess
 keine Rueckschluesse auf Angriffsplaene der Regierung zu,
 da der Stand der Ruestung auf diesem Gebiet objektiv fuer
 eine moderne Kriegsfuehrung unzureichend war.

Die Angeklagten hatten, um es noch einmal zu betonen, nach den vorangegangenen Darlegungen keine Kenntnis von den unter Ziff. 6) dieses Schlussbriefes behandelten Verhaeltnissen auf dem Pulver- und Sprengstoffgebiet sowie von dem Umfang der Taetigkeit der D.A.G. und von den Gesamtzahlen der Produktion an militaerischem Sprengstoff und Pulver. Aber auch wenn sie eine solche Kenntnis gehabt haetten, so haette ihnen diese ebensowenig Anlass gegeben, daraus Rueckschluesse auf Angriffsabsichten der politischen Fuehrung Deutschlands zu ziehen. Denn wie sich gerade fuer den mit diesem Gebiet vertrauten Fachmann die Entwicklung der deutschen Ruestung bezueglich Sprengstoff und Pulver darstellte, haben die Zeugen Schindler und Schnurr in ihren eidesstattlichen Erklaerungen geschildert.

(Siehe eidesstattliche Erklaerung Heinrich Schindler D.A.G. Dok. 10, Verteidigungsbeweisstueck 10, in D.A.G.-Dok.Buch I, S. 39 und eidesstattliche Versicherung Dr. Schnurr D.A.G.-Dok. 14, Vert. Bew. 14, in D.A.G.-Dok.Buch I, S. 69.)

Diese Zeugen weisen auf eine Reihe von Umstaenden hin, die einwandfrei die Behauptung der Anklagebehoerde widerlegen, dass die auf dem Pulver- und Sprengstoffgebiet betriebene Wiederaufruestung fuer die daran beteiligte Industrie als Vorbe-

reitung eines Angriffskrieges erscheinen konnte.

Aus den eidesstattlichen Versicherungen geht hervor, dass

- a) der Stand der Rüstung auf diesem Gebiet fuer eine moderne Kriegsfuehrung ganz unzureichend war, und
- b) auch die betrieblichen Vorgaenge vor dem Krieg und insbesondere kurz vor Kriegsbeginn in keiner Weise auf einen bevorstehenden Ausbruch der Feindseligkeiten hindeuteten.

Es sei nur auf die folgenden besonders markanten Punkte aufmerksam gemacht.

Zu a) Das Schwergewicht der Taetigkeit der D.L.G. hinsichtlich der von ihr erbauten Reichsanlagen (Montan-Betriebe) lag absolut in der Kriegsperiode selbst. Die Ausgaben hierfuer betrugen bis Kriegsbeginn nur 12 %, waehrend auf die Kriegszeit die restlichen 88 % der insgesamt im Rahmen dieser Bautaetigkeit aufgewandten Kosten entfielen. Dabei sind in den 12 % noch die Aufwendungen fuer den Neubau einer durch Explosion zerstoeerten Anlage enthalten, die nach dem Versailler Vertrag militaerischen Sprengstoff herstellen durfte.

Die Eisenzuteilung und die Gestellung von Arbeitskraeften fuer Neubauten auf dem Pulver- und Sprengstoffgebiet waren vor dem Kriege voellig unzureichend. Die Neubautaetigkeit wurde dadurch gerade in der Zeit vor Ausbruch des Krieges stark gehemmt.

Bei Kriegsbeginn konnte von einem Abschluss der Planung auf diesem Gebiet keine Rede sein. Der Stand der technischen Ruestung auf dem Pulver- und Sprengstoffgebiet

war vielmehr ganz unzulänglich. Beispielsweise betrug die Kapazität an Trinitrotoluol, die keineswegs voll ausgefahren wurde, insgesamt in Deutschland etwa 6 000 t. Im Kriege wurde sie auf 20 - 22 000 t gesteigert, und erreichte damit erst rund 40 % der Leistungsfähigkeit der U.S.A.

Auf manchen anderen Gebieten lagen zu Kriegsbeginn die Verhältnisse noch wesentlich schlechter als bei Trinitrotoluol, z. B. existierten zu diesem Zeitpunkt für die modernen und entscheidend wichtigen Stoffe Hexogen und Nitroguanidin weder nennenswerte Fabrikationskapazitäten noch irgendwelche auch nur einigermaßen ins Gewicht fallende Vorräte.

(Siehe eidesstattliche Erklärung Dr. Schmurr D.L.G.Dok. 14, Vert.Bew. 14, in D.L.G.-Dok.Buch I, S.69.)

Auch was die Weiterverarbeitung der Sprengstoffe und ihr Verfüllen in die Munition anlangt, waren die Vorbereitungen ausserst mangelhaft. Bei Kriegsbeginn stellte es sich heraus, dass viel zu wenig Munitionsfüllstellen vorhanden waren, sodass übereilt eine ganze Reihe von unzulänglichen Provisionen geplant und erstellt werden mussten.

(Siehe eidesstattliche Erklärung Heinrich Schindler D.L.G.Dok. 10, Vert.Bew. 10, in D.L.G.-Dok.Buch I, S. 43.)

Die Aufträge, die das Heereswaffenamt im Zusammenhang mit der Errichtung bzw. dem weiteren Ausbau reichseigener Fabriken herausgab, wurden als "Vor-

bescheide" bezeichnet. Von den insgesamt an die D.A.G. erteilten Vorbescheiden erfolgten

112 - 29,3 % vor dem 1.9.1939,

38 - 21,6 % vom 1.9. - 31.12.1939,

188 - 49,1 % vom 1.1.1940 - Kriegsende.

Zu b) In der Zeit vor dem Kriege wurden die vorhandenen an sich schon ungenuegenden Kapazitaeten nicht voll ausgenutzt. Es lag kein Befehl vor, die Anlagen voll auszufahren, geschweige denn, die Produktion zu forcieren. So entfiel von der Gesamtproduktion der verschiedenen Werke der Verwert-Chemie von Anfang 1937 bis Kriegsende lediglich ein verschwindend kleiner Teil, naemlich 3,4 %, auf die Zeit vor Kriegsausbruch, waehrend 96,6 % der Gesamtproduktion waehrend des Krieges erfolgten.

Noch zu Beginn des Jahres 1939 wurde eine einschneidende Uemaenderung bei dem Herstellungsverfahren fuer Trinitrotoluol durchgefuehrt zwecks Erzeugung eines besonders hochwertigen Produktes mit jahrzehntelanger Lagerfaehigkeit. Diese Massnahme war, wenn ein Krieg in Aussicht stand, ueberfluessig, weil eine so lange Lagerfaehigkeit dann nicht notwendig war. Sie war darueber hinaus schaedlich, weil durch die Umstellung voruebergehend Produktionsstillstaende sich ergaben und auch auf die Dauer bei dem neuen Verfahren die Leistungsfahigkeit der Anlage geringer blieb und die Rohstoffausbeute schlechter war.

Bis Kriegsbeginn wurde die gesamte Produktion (Bomben und Granaten) mit Reintrinitrotoluol gefuellert, ein Verfahren, das nur sinnvoll war, wenn man eine jahr-

zehntelange Lagerfähigkeit der Munition bezweckte.
 Anderenfalls hätte man die Munition mit einem Gemisch von 60 Tri / 40 Ammonsalpeter füllen müssen, da eine solche Füllung bei absolut ausreichender Sprengwirkung eine Mehrproduktion von fast 70 % bei gleichzeitiger ausserordentlicher Verbilligung bedeutet. (Ammonsalpeter kostet nur einen Bruchteil des Preises fuer Trinitrotoluol.)

Wenn demgegenueber in dem Dokument NI-9193, Anklage-Beweisstueck 698, Band 32, Seite 101, engl. S. 105, der Affiant Dr. Zeidelhack behauptet, dass die von der I.G. und ihren Konzerngesellschaften in der Vorkriegszeit errichteten Reichsanlagen den Friedensbedarf um das Doppelte ueberstiegen, so ist diese Angabe schon deshalb voellig wertlos, weil von der Kapazitaet der Anlagen in der eidesstattlichen Erklaerung ueberhaupt nicht gesprochen wird. Mit Recht weist der Zeuge Schindler in seiner eidesstattlichen Erklaerung vom 2.12.1947 (D.A.G.-Dok. 11, Vert.Bew. 11 im D.A.G.-Dok.Buch I, S. 50) darauf hin, dass eine bestimmte Kapazitaet sowohl mit einer als auch mit mehreren Fabriken erreicht werden kann, weswegen die Anzahl der Werke, auf die Dr. Zeidelhack seine Behauptung stuetzt, keinen Anhaltspunkt fuer die Hoehe der Kapazitaet gibt. Der Zeuge Schindler hebt weiter hervor, dass der Begriff des Friedensbedarfs eines Heeres, mit dem Dr. Zeidelhack operiert, theoretisch und in sich widerspruchsvoll ist, da - abgesehen von kleinen Mengen fuer Manoever und Schiessuebungen - ein Bedarf an Munition im Frieden ueberhaupt nicht besteht. Im uebrigen wurden, wie der Zeuge Schindler weiter hervorhebt, neue Kapazitaeten nur geschaffen, soweit sie vom

Heereswaffenamt gefordert und in Auftrag gegeben wurden, wobei die Industrie keinerlei Ueberblick hatte, inwieweit diese Kapazitaeten benoetigt wurden.

Soviel bezueglich der augenfaelligsten Umstaende auf dem Gebiet der Produktion militaerischer Sprengstoffe und Pulver, die offensichtlich die von der Anklagebehoerde behauptete Vermutung eines kommenden Angrifskrieges bei denjenigen, die einen Einblick in dieses Gebiet hatten, widerlegen. Der generell unzureichende Ruestungsstand Deutschlands ist eindeutig durch die Bekundung hervorragender Fachleute wie Dr. Ehmann am 15.1.1948, engl. S. 5356, deutsche S. 5384, Dr. Zahn am 14.4.1948, engl. S. 11488/89, deutsche S. 11625/26, General Huehnemann am 5.5.1948, engl. S. 13498f., deutsche S. 13791 f., sowie durch die Aussage des Zeugen Milch, engl. S. 5329, deutsche S. 5355, dargetan worden.

9. Aus rechtlichen und tatsächlichen Gründen hätte
 fuer die I.G. und insbesondere fuer die Angeklagten
 Schmitz und Gajewski keine Möglichkeit bestanden, in
 die Betätigung der D.L.G. und mehr noch der Verwert-
 Chemie auf dem Ruestungsgebiet einzugreifen.

Abschliessend sei in diesem Zusammenhang noch einmal die Frage
 erörtert, welche Möglichkeit den Angeklagten ueberhaupt zur
 Verfuegung gestanden haetten, um die Beteiligung der D.L.G. an der
 deutschen Wiederbewaffnung vor und waehrend des Krieges zu ver-
 hindern, falls ihnen diese Taetigkeit der D.L.G. bekannt gewesen
 waere und Anlass zu irgendwelchen Bedenken gegeben haette, was
 beides, wie bereits ausgefuehrt, nicht der Fall war.

Die Einschaltung der D.L.G. in die Wiederbewaffnung erfolgte auf
 dem Gebiet der militaerischen Sprengstoffe und Pulver abgesehen
 von der geringen eigenen und auflagebedingten Produktion im
 wesentlichen dadurch, dass der D.L.G. vom OKH, der -auftrag erteilt
 wurde, als Treuhaender des Reiches Anlagen zur Erzeugung von
 militaerischen Sprengstoffen und Pulver zu errichten, die nach
 ihrer Fertigstellung auf das Reich bzw. die von ihm fuer diese
 Zwecke gegruendete sogenannte Montan-Gesellschaft uebertragen wur-
 den. Die Montan-Gesellschaft verpachtete diese Anlagen im all-
 gemeinen an die Verwert-Chemie, die dann deren Betrieb ueber-
 nahm. Dabei muss hervorgehoben werden, dass nicht nur die I.G.
 in diesem Zusammenhang keiner Initiative entwickelte, sondern
 dass es sich sowohl bei dem Bau der Fabriken als auch bei deren
 Inbetriebnahme und bei jeder einzelnen Bestellung um -auftraege
 der zustaeendigen militaerischen Dienststellen handelte. Da diese
 -auftraege den Charakter einer Auflage, d. h. eines staatlichen

Befehls hatten, waere es der D.L.G. angesichts des in Deutschland herrschenden Systems unmoeglich gewesen, einem solchen Befehl nicht nachzukommen. (Siehe dazu die Ausfuehrungen im Schluss-Brief Prof. Wahls, Aussage Kastl, engl. Prot.-S. 5419 f., deutsche Prot.-S. 5759 f., Urteil des Militaergerichtshofs Nr. IV, Protokoll im Fall V, engl. S. 10 993/94, deutsche S. 10 736).

Zu der Frage der staatlichen Wirtschaftslenkung und der daraus sich fuer jeden deutschen Unternehmer ergebenden Zwangslage mit all ihren Folgeerscheinungen sei auf das ausfuehrliche Beweismaterial in den Dokumentenbuechern der Meer "Wirtschaftsregelung" I - III verwiesen, ferner auf die diesbezuglichen Ausfuehrungen im Schluss-Brief fuer Dr. der Meer sowie auf die Aussage Dr. Vits, engl. Prot.-S. 14264 - 14 280, deutsche S. 14 612 - 14624 und die oben zitierten Fundstellen.

Im vorliegenden Falle hat dieses Problem aber noch einen besonderen Aspekt, und zwar insofern, als es sich bei der D.L.G. um ein selbststaendiges Unternehmen mit eigenem Vorstand handelte, das - wie auch immer die internen Beziehungen zwischen I.G. und D.L.G. beschaffen gewesen sein moegen - nach aussen hin, Dritten und vor allem auch den staatlichen Stellen gegenueber die ausschliessliche Unternehmerversantwortung trug und damit fuer die Erfuellung der ihr erteilten staatlichen Auflagen allein verantwortlich war.

Wie sich aus zahlreichen Aussagen von Zeugen sowohl der Anklagebehoerde wie der Verteidigung ergibt, war die entscheidende Persoenlichkeit, bei der insbesondere die technische Fuehrung des D.L.G.-Konzerns lag, deren Generaldirektor Dr. Paul Mueller. Wenn ueberhaupt jemand, so haette also nur er angesichts der

vorstehend geschilderten Sachlage die theoretische Möglichkeit gehabt, die der D.A.G. vom OKH. auferlegten Massnahmen im Rahmen der Wiederbewaffnung auf dem Sprengstoff- und Pulvergebiet einzuschränken.

Fuer die in diesem Zusammenhang voellig aussenstehenden Vorstandsmitglieder der I.G., insbesondere auch die Angeklagten Schmitz und Gajewski, bestand eine solche Möglichkeit zweifellos nicht, und zwar schon deswegen, weil das OKH. seine Anforderungen an die D.A.G. richtete und auch die entsprechenden Abmachungen nur mit ihr traf, wobei dem Vorstand der I.G. nicht einmal Kenntnis von solchen Aufträgen und Abmachungen gegeben werden durfte. (Siehe Dokument NI-7721, Anklagebeweisstueck 559, Buch 34, engl. ^{S.} 1, deutsche S. 1 unter Par. 14, eidesstattliche Versicherung Gierlichs, D.A.G.-Dokument Nr. 9, Vert.Bew. 9 in D.A.G.-Dok. ^{Buch} I, S. 34; Aussage Dr. ter Meer, engl. Prot.-S. 7120, deutsche Prot.-S. 7173.)

In diesem Zusammenhang ist die Tatsache, dass die Angeklagten Schmitz und Gajewski in ihrer Eigenschaft als Aufsichtsratsmitglieder der D.A.G. eine gewisse, seit Inkrafttreten des neuen Aktiengesetzes im Jahre 1933 jedoch sehr stark eingeschränkte Ueberwachungsfunktion gegenüber der D.A.G. auszuueben hatten, praktisch ohne Bedeutung, denn diese Ueberwachungsfunktion erstreckte sich entsprechend den gesetzlichen Befugnissen des Aufsichtsrats lediglich auf die kaufmaennische Ordnungsmässigkeit der Geschäftsfuehrung der D.A.G.. Gerade finanzielle Gesichtspunkte, die vielleicht einen Vorwand hatten bieten koennen, sich den Auflagen des OKH. zumindest teilweise zu entziehen, spielten aber auf diesem Gebiet der Wiederbewaffnung gar keine Rolle, weil ja die benoetigten Mittel fast ausschliesslich vom Reich zur Verfuegung gestellt wurden. Nachdem

somit irgendwelche Bedenken in finanzieller bzw. kaufmännischer Hinsicht nicht bestanden, bedarf es wohl keiner näheren Erläuterung, dass der Aufsichtsrat keinerlei Handhabe gehabt hätte, um den Vorstand der D.G. an der Durchführung der Auflagen des OGH. zu hindern oder die damit verbundene geschäftliche Tätigkeit zu beanstanden. Es sei in diesem Zusammenhang nochmals darauf hingewiesen, dass von den durchschnittlich etwa 20 Mitgliedern des Aufsichtsrats höchstens 2 - 3 gleichzeitig Vertreter der I.G. waren, die demnach einen entsprechenden Beschluss des Aufsichtsrats niemals hätten herbeiführen können.

Dies gilt in noch höherem Masse hinsichtlich der Verwert-Chemie, bei der - wie bereits ausgeführt - das Schwergewicht der Rüstungstätigkeit des D.G.-Konzerns sowohl hinsichtlich der Durchführung von Neubauten als auch der Produktion militärischer Sprengstoffe und Pulver lag. Hier erfolge jede kleinste Bestellung im Auftrag und auf Kosten des Reiches. Ueberdies hatte keiner der Angeklagten irgendwie geartete Beziehungen zur Verwert-Chemie, etwa ueber ein Aufsichtsratsmandat, und es ist in dieser Hinsicht auch von der Anklagebehörde nicht das Geringste dargetan worden.

Zu Beginn der Wiederaufrüstung, als sich diese Entwicklung zweifelsohne doch in einem auch international nicht beanstandeten Rahmen bewegte (siehe Londoner Flottenabkommen etc.), waren, die diesbezüglichen staatlichen Anordnungen noch weniger weitgehend. Aber wie der Zeuge Schindler in seinen eidesstattlichen Erklärungen vom 1.12.1947 und vom 19.12.1947 schildert, war auch die tatsächliche Aktivität insbesondere auf dem Pulver- und Sprengstoffgebiet in diesem Zeitabschnitt ausserst gering. (Siehe D.G.-Dokument 10, Vert. Bew. 10 und D.G.-Dok. 13, Vert. 13, beide in D.G.-Dok.Buch I, S. 39 u. 59).

Im weiteren Verlauf, insbesondere nach Ausbruch des Krieges war vor allem in Fragen der Rüstungsproduktion praktisch auch die letzte Spur einer freien Unternehmerentscheidung verschwunden, und es bedarf wohl keiner näheren Begründung, dass die Verweigerung der Durchführung von Auflagen des OKH, an deren Zwangscharakter keinerlei Zweifel bestehen konnte, aufgrund gesetzlicher Bestimmungen als Sabotage und Wehrkraftzersetzung mit Sicherheit langjährige Freiheitsstrafen, wenn nicht Haft in einem Konzentrationslager oder auch die Todesstrafe zur Folge gehabt hätte. (Siehe dazu die eingehenden Ausführungen im Schluss-Brief Professor Wahl und dessen Plaidoyer, ferner die Feststellungen in dem Urteil des Militäergerichtshof Nr. IV, Protokoll Fall V, engl. S. 10 993/94, deutsche S. 10 736 sowie die auf Seite 68 zitierten Aussagen der Zeugen Vits u. Kastl sowie die Aussage des Zeugen Lamers, engl. Prot.-S. 5656, deutsche Prot.-S. 5694/5.)

10. Der Vorwurf der Anklage, der I.G.-Konzern habe

 bewusst auf eine Schwächung des Kriegspotentials

 der voraussichtlichen Gegner Deutschlands hinge-

 arbeitet, entbehrt fuer das Pulver- und Spreng-

 stoffgebiet jeder Grundlage.

Die Anklagebehörde hat im Zusammenhang mit ihren Ausfuehrungen ueber die angebliche Mitwirkung der I.G. bei der Vorbereitung des Angriffskrieges u. a. auch den Vorwurf erhoben, dass die I.G. durch Abschluss von Kartellvereinbarungen die militaerische Leistungsfahigkeit dieser Laender durch Auferlegung von Bindungen bewusst geschwaecht habe. In diesem Zusammenhang hat die Anklagebehörde die Dokumente NI-10969, Anklagebeweisstueck Nr. 1011, NI-10970, Anklagebeweisstueck Nr. 1012 sowie die Dokumente NI-10963, Anklagebeweisstueck Nr. 1013 und NI-10964, Anklagebeweisstueck Nr. 1014 vorgelegt mit der Behauptung, dass aufgrund der in den beiden erstgenannten Dokumenten enthaltenen Vereinbarungen die amerikanische Firma Remington Arms waehrend des Krieges nicht in der Lage gewesen sei, die fuer die Kriegsfuehrung ausserst wichtige Tetrazen-Munition an England zu liefern. Schon der Hinweis auf die Tatsache, dass die in Rede stehenden Vertraege in den Jahren 1929 bis 1931 abgeschlossen wurden, muesste genuegen, um darzutun, dass der von der Anklagebehörde erhobene Vorwurf in diesem Falle unbegrundet ist. Darueber hinaus hat der Zeuge von Herz, der als Miterfinder der Tetrazen-Munition an den diesbezuglichen Verhandlungen mit Remington, ICI und Canadian Industries Limited massgeblich beteiligt war, in einer ausfuehrlichen eidesstattlichen Erklaerung (D.A.G.-Dok. Nr. 17,

Verteidigungsbeweisstueck 17, D.L.G.-Dok.Buch II, S. 1) die irrigen Schluesse, die die Anklagebehoerde aus den von ihr vorgelegten Vertragen gezogen hat, richtiggestellt. Es genuegt, hier die abschliessende Bemerkung des Zeugen wiederzugeben:

"Aus dem Vorstehenden ergibt sich, dass die Ausschliessung Remingtons von den Maerkten des Britischen Empires fuer militaerische Tetrazen-Munition auf ein Verlangen der ICI zurueckging, welchem die D.L.G. stattgab."

(Wegen der vollstaendigen, dieses Gebiet betreffenden Ver-
traege siehe im einzelnen die D.L.G.-Dokumente bzw. Verteidigungs-
beweisstuecke Nr. 18, 19, 20 und 21, D.L.G.-Dok.Buch II, S. 5, 22,
33 und 47).

Im uebrigen hat die Anklagebehoerde auch nicht den leisesten Versuch gemacht, nachzuweisen, dass irgendeiner der Angeklagten mit dem Abschluss dieser Vertraege befasst war oder auch nur davon Kenntnis hatte.

Dass von einer Absicht der D.L.G., die Wehrkraft der vermeintlichen Gegner Deutschlands zu schwaechen, ueberhaupt nicht die Rede sein kann, beweist eindeutig die eidestaetliche Erklarung des Zeugen von Herz betr. das sogenannte Sprengniet-Verfahren (D.L.G.-Dokument bzw. Verteidigungsbeweisstueck Nr. 23). Es handelt sich dabei um die Ueberlassung eines von den Heinkel-Flugzeugwerken und der D.L.G. entwickelten Verfahrens zur Herstellung von Sprengnieten an eine amerikanische Gesellschaft. Der Zeuge stellt zusammenfassend fest:

"Sowohl von den Heinkel-Flugzeugwerken als auch von der D.L.G. wurde also alles getan, um die Fertigung und Benutzung der Sprengnieten, welches Vor-

fahren vor allem im Kriege fuer die deutsche Luft-
waffe von groesster Bedeutung war, in den USA. noch
nach Ausbruch des Krieges zu ermoeeglichen."

Schliesslich ergibt sich aus der eidesstattlichen Erklaerung
Franz Anton Gierlichs vom 3.12.1947 (D.-G.-Dokument und Ver-
teidigungsbeweisstueck Nr. 22, Dokumentenbuch D.-G. II, S. 54),
dass die D.-G. bzw. die zu ihrem Konzern gehoerige Koeln-Rottweil A.G.,
der das gesamte Exportgeschaeft der D.-G. in militaerischen Spreng-
stoffen uebertragen war, noch in den letzten Jahren vor Aus-
bruch des zweiten Weltkrieges in erheblichem Umfang Lieferungen
an Laender getaetigt hat, die im Kriege Gegner Deutschlands
waren.

Diese Bekundungen der Zeugen von Herz und Gierlichs klaeren
nicht nur die Einstellung der D.-G. im Hinblick auf die behauptete
Absicht der Schwachung der Wehrkraft vermeintlicher Feindstaaten
Deutschlands, sondern geben auch einen weiteren wichtigen Hin-
weis dafuer, dass bei der D.-G. irgendein Verdacht bezueglich
eines geplanten Angriffskrieges nicht bestanden hat, und dass
ein solcher Verdacht umso weniger bei ihr aufkommen konnte,
als fuer die von den Zeugen geschilderten Geschaeftsvorfaelle
behoerdliche Genehmigungen notwendig waren und auch erteilt wor-
den sind.

Die Ausfuehrungen dieses Schlussbriefs seien noch einmal kurz
wie folgt zusammengefasst:

Das ausfuehrliche Beweismaterial hat nach Auffassung der Ver-
teidigung den Beweis dafuer erbracht, dass die Angeklagten und
insbesondere Schmitz und Gajewski, auf die geschaeftliche Taetig-
keit der D.-G. und der Verwert-Chemie nicht den geringsten Ein-
fluss ausuebten, soweit das Gebiet der Erzeugung militaerischer

Sprengstoffe und Pulver infrage steht, und dass sie von den Vorgängen auf diesem Arbeitsgebiet auch keine Kenntnis hatten, die ihnen einen annähernden Ueberblick ueber dessen Umfang ermoglichte. Es sei ergaenzend hinzugefuegt, dass die Situation bezueglich der Firmen Wolff & Co. und Wasag sowie deren Tochtergesellschaften Eibia und Sprengchemie genau die Gleiche war. Der Beweis des Gegenteils ist der Anklagebehoerde nicht gelungen. Demnach ist nichts dafuer dargetan, dass den Angeklagten eine schuldhafte Unterlassung oder eine Teilnahme durch stillschweigende Billigung im Zusammenhang mit dem Anklagepunkt 1 insofern zur Last gelegt werden kann, als es sich um die Ruestungsmassnahmen auf dem Pulver- und Sprengstoffgebiet handelt. Die Verteidigung moechte in diesem Zusammenhang noch einmal betonen, dass sie der Auffassung ist, dass das ganze diesbezugliche Vorbringen der Anklagebehoerde im Hinblick auf Punkt 1 der Anklage irrelevant ist. Sie hat sich jedoch verpflichtet gefuehlt, auf dieses ausfuehrliche Vorbringen ebenso ausfuehrlich einzugehen, obgleich dies, wie gesagt, ihrer Ansicht nach mit Ruecksicht auf die in der motion vom 17. Dezember 1947 im Einzelnen angefuhrten Gruende aus rein rechtlichen Gesichtspunkten nicht erforderlich gewesen waere. Insoweit wird auf den Inhalt dieser motion und auf das diesbezugliche Plaidoyer von Dr. von Metzler ausdruecklich Bezug genommen.

Muerberg, den 2. Juni 1948.

Hanns Gierliche
(gez. Hanns Gierliche)
Carl Weyer
(gez. Carl Weyer)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Roll 101

Target 5

Defense Brief on Degesch

(German)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Case 6
Defense

Militärgerichtshof VI

Fall 6

CLOSING BRIEF

fuer den

FALL DEUTSCH

fuer die Gesamtvertretung

vorgelegt von

Dr. Erich Bernitt

Rechtsanwalt



LOSINGBRIEF DEGESCH

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Die Anklage versucht, nachzuweisen, dass die Vorstandsmitglieder der I.G., insbesondere die Angeklagten Mann, Hoerlein, Wurster und Brueggemann fuer den Missbrauch von Zyklon B mit verantwortlich sind. Sie behauptet, dass Massentoetungen von KZ-Haeftlingen mit Zyklon B von der SS durchgefuehrt wurden, welches diese von der Deutschen Gesellschaft fuer Schaedlingsbekaepfung (Degesch) erhalten hat. Diese Gesellschaft soll das Zyklon in Kenntnis dieses Verwendungszweckes geliefert haben. Die Angeklagten seien dafuer deshalb verantwortlich, weil die I.G. an der Degesch massgeblich beteiligt sei, und den Angeklagten der Missbrauch des

Zyklons

Zyklons — zumindest in der Form eines dahingehenden Verdachts — bekannt gewesen sei.

A. DIE BEZIEHUNGEN DER I.G. ZUM ZYKLONGESCHAEFT

Zyklon B wurde im Auftrag und auf Rechnung der Degussa von zwei selbstständigen Firmen in Dessau und Kolin, die beide zur I.G. in keinerlei Zusammenhang standen, hergestellt und von der Degesch mit Hilfe der Firmen Heerdt & Lingler und Tesch & Stabenow vertrieben.

(Vernehmung Amend Prot. e.S. 5000, 5009
d.S. 5023, 5031

" Mann " e.S. 10466, 10467
d.S. 10602/3)

Die Degesch ist eine G.m.b.H., an der die Deutsche Gold- und Silber-Scheideanstalt, vormals Roessler (Degussa), die I.G. Farbenindustrie A.G. und die Th. Goldschmidt A.G. beteiligt sind.

Die Beteiligung der I.G. an der Degesch beträgt 42,5 % des Stammkapitals dieser G.m.b.H.; die I.G. steht also durch ihre kapitalmaessige Beteiligung an der Degesch in einem rein äusserlichen Zusammenhang mit dem Absatz von Zyklon B. Ausserdem wurde dem Zyklon B ein sogenannter Stabilisator zugesetzt, der von dem I.G.-Werk Uerdingen fabriziert wurde. Diese beiden Tatsachen nimmt die Anklage zum Anlass, gegen die Vorstandsmitglieder der I.G. den Vorwurf der Teilnahme an den Auschwitz Massendenken zu erheben.

a) Der dem

b) Die Beteiligung der I.G. an der Degesch

Die Beteiligung der I.G. an der Degesch war rein kapitalmaessiger Natur. Der Versuch der Anklage, nachzuweisen, dass ueber diese kapitalmaessige Beteiligung hinaus eine aktive Mitwirkung eines Teiles der I.G.-Vorstandsmitglieder an dem Degeschgeschaefte bestand, und dass diese positive Kenntnis oder doch zum mindest schuldhaftes Nichtkenntnis der Zyklonmorde hatten, ist gescheitert.

Die von der Anklage und der Verteidigung vorgetragenen Beweise ergeben in ihrer Gesamtheit eindeutig, dass die reale Anteilnahme der I.G. an der Degesch wesentlich geringer war, als der Umfang der kapitalmaessigen Beteiligung zunaechst vermuten laesst. Dem kapitalmaessigen Besitz von $42 \frac{1}{2} \%$ des Stammkapitals hat zu keinem Zeitpunkt ein $42 \frac{1}{2} \%$ iger I.G. Einfluss auf die Geschaeftsfuehrung der Degesch entsprochen.

(Exh. Degesch Nr. 28, Dok. Nr. 20 Bd. Deg. II S. 18)

Die Tatsache der Beteiligung mehrerer Partner an der Degesch, von denen keiner die Majoritaet der Geschaeftsanteile besass, wirkte sich ganz von selbst dahin aus, dass die Geschaeftsfuehrung der Degesch im Besitz weitgehender Selbststaendigkeit und Handlungsfreiheit war. Diese Tatsache, die auch noch durch die besondere Art des Degesch-Geschaeftes, das eingehende technische Spezialkenntnisse voraussetzt,

(Vernehmung Mann Prot. o. S. 10466/67

d. S. 10602/3

"

Goldschmidt Prot. o. S. 12875/76
d. S. 13078 }

begünstigt wurde, ist von dem Zeugen Peters bei seiner Vernehmung ausdrücklich hervorgehoben worden. (

(Vernehmung Peters Prot. e. S. 10632 d. S. 10775
" " " " " 10517 " " 10653)

aa) Nur 3 von 7 Degeschprodukten waren
I.G. Erzeugnisse

aa) Die Anklage versucht, ein starkes Übergewicht der I. G.-Beteiligung den übrigen Degesch-Partnern gegenüber zunächst daraus herzuleiten, dass von den insgesamt acht Degesch-Produkten sieben von der I. G. stammende Produkte waren, während nur eines, nämlich Zyklon B, von einem anderen Partner stammte. Diese Darstellung ist unrichtig. Es gab insgesamt nur sieben (nicht acht) Degescherzeugnisse

(Exh. Degesch Nr. 58, Dok. Nr. 67 Bd. Deg. III S. 34
" " " " " " " " III S. 50
" " " " " " " " I S. 62),

von denen das wichtigste, nämlich das Zyklon, von der Degussa und das sogenannte T-Gas von der Th. Goldschmidt A.G. stammten.

(Exh. Degesch Nr. 32 Dok. Nr. 56 Bd. Deg. II, S. 29)

Reine I.G. Erzeugnisse waren nur drei Degeschprodukte, nämlich Calcid, Ventox und Tritox. Das im Geschäftsbericht fuer 1943 erwähnte Areginal

(Exh. Degesch Nr. 59 Dok. Nr. 68 Bd. Deg. III S. 50)

gehörte nicht zu den Degesch-Produkten

(Exh. Degesch Nr. 12, Dok. Nr. 44 Bd. Deg. I, S. 34),

sondern es wurde nur ganz vorübergehend im Jahre 1944 benutzt.

(Exh. Degesch Nr. 59, Dok. Nr. 68 Bd. Deg. III S. 53)

(Vernehmung Amend Prot. e. S. 5003/4
" " " " " d. S. 5026)

Die Zahl der von der I.G. stammenden Degesch-Produkte

ergibt

ergibt also nicht den behaupteten I.G.-Vorrang. Dieser gescheiterte Versuch, die I.G. Produkte der Degesch im Verhaeltnis zu den Produkten der anderen Partner in den Vordergrund zu schieben, ist aber ein sehr interessantes Beispiel dafuer, wie die Anklage aus ein und derselben Tatsache sich widersprechende Schlussfolgerungen zieht, wenn diese nur rein aeusserlich in das Gebaeude ihrer Beweisfuehrung hineinnassen. In anderem Zusammenhang weist die Anklage naemlich daraufhin, dass das Zyklongeschaeft der weitaus tragende Bestandteil des Degeschabsatzes war, und dass hieraus auf das besondere Interesse der I.G. am Zyklonabsatz geschlossen werden muesse. Diese Schlussfolgerung der Anklage ist, wie in anderem Zusammenhang naeher ausgefuehrt wird, unrichtig.

(vgl. u.S. .43....)

Richtig ist aber die ihr vorausgeschickte tatsaechliche Feststellung, dass der Zyklonabsatz den groessten Teil des Gesamtabsatzes der Degesch ausmachte.

(Vernehmung Amend Prot. e.S. 5009 d.S. 5031
Exh. Degesch Nr. 56, Dok. Nr. 65, B d. Deg. III S. 1
" " " 58, " " 67, " " " S. 34
" " " 59, " " 68, " " " S. 50
Ankl. Exh. 1773 Dok. Nr. NI 9093 DB. 82 e.S. 137
d.S. 1 86)

Dieses Verhaeltnis zwischen dem finanziellen Ertrag des Zyklonabsatzes und dem der uebrigen Degeschprodukte hat sich aber nicht erst waehrend des Krieges entwickelt; solange die I.G. Beteiligung an der Degesch besteht, war der Gesamtertrag des Absatzes der I.G. Produkte immer geringer als der

Ertrag

Ertrag des Zyklonabsatzes, . . .

(Vermehrung Amend Prot. e. S. 5009	d. S. 5031
Exh. Degesch Nr. 49, 50	Dok. Nr. 70, 71 (Skizzen)
" " " 56	" " 65 Bd. III S. 1
" " " 57	" " 66 " " 18
" " " 58	" " 67 " " 34)

Es ist also eine ausgesprochen irrefuehrende Art der Beweisfuehrung, wenn die Anklage die Zahl der von der Degesch vertriebenen I.G. Produkte ins Feld.fuehrt, um das Ueberweicht und den Vorrang des I.G. Interesses an der Degesch gegenueber dem Interesse der uebrigen Gesellschafter darzutun. Entscheidend ist nicht die Zahl der Produkte, die ein Gesellschafter in die Degesch eingebracht hat, sondern ihre Bedeutung fuer den Umfang der im Rahmen der Degesch abgeschlossenen Geschaefte und damit zugleich auch fuer den erzielten Gewinn. Insoweit steht aber eindeutig fest, dass die von der Degesch angewandten I.G.-Produkte in ihrer Gesamtheit bei weitem nicht der Bedeutung des von der Degussa entwickelten Zyklonverfahrens auch nur annaehernd gleichkamen.

bb) Die I.G. hatte aufgrund ihrer Vertretung im Verwaltungsausschuss der Degesch keinen bestimmenden Einfluss auf deren Geschaeftsfuehrung

Die Anklage stuetzt ihre Behauptung von dem Vorrang der I.G. in der Degesch ferner darauf, dass von elf Mitgliedern des Verwaltungsausschusses der Degesch fuenf dem Vorstand der I.G. entnommen waren und dass diese den Vorsitzenden dieses Ausschusses stellte. Auch hiermit soll der Anschein erweckt werden, als habe die I.G. innerhalb der Degesch die dominierende Rolle gespielt. Nichts ist unrichtiger als

- 8 -

als diese Annahme. Die I.G. stellte ebenso wie die Degussa 5 Vertreter im Verwaltungsausschuss. Dr. Heerdt, den die Anklage nicht zu den Degussavertretern rechnet, gehoerte tatsaechlich zu diesen.

(Vernehmung Heerdt Prot.e.S. 10498 d.S.10634)

Seit dem Tode des Verwaltungsausschuss-Mitgliedes Weber-Andrae im Jahre 1943 war die I.G. nur noch durch 4 Herren vertreten und damit der Degussa gegenueber in der Minderheit. Der Verwaltungsausschuss hatte aber ferner seiner Natur nach mit der Fuehrung der Geschaeftes der Degesch, mit ihrer Bestaetigung als kaufmaennisches und technisches Unternehmen nichts zu tun. Als juristische Person und als am wirtschaftlichen Leben teilnehmende Unternehmung wurde die Degesch ausschliesslich von den nach ihrem Statut und den nach den Bestimmungen des G.m.b.H.-Gesetzes berufenen Personen vertreten, d.h. durch ihre Geschaeftsfuehrer und Prokuristen. Diese sind aber niemals aus dem Kreis der I.G. hervorgegangen..

(Exh. Degesch Nr.66 Dok.Nr.76 Bd.III.S.465f)

Der Verwaltungsausschuss ist weder in dem Gesellschaftsstatut der Degesch

(Exh.Degesch Nr.15 Dok.Nr.43 Bd.I S.44-46f)

noch im G.m.b.H. - Gesetz als Gesellschaftsorgan vorgesehen. Er beruht vielmehr auf dem unter den drei Degesch-Partnern, Degussa, I.G. und Th.Goldschmidt A.G. abgeschlossenen Konsortialvertrag vom 15.9.1936/17.3.1937.

(Exh.Degesch Nr.14, Dok.Nr.6 Bd.Degesch I S. 39/43).

In Paragraph 3 dieses Vertrages ist bestimmt, dass der Verwaltungsausschuss den Gesellschaftern gegenueber

ueber die Stellung eines Aufsichtsrates hat, und dass er den Geschaeftsfuehrern gegenueber die Gesellschafter in Ausuebung ihrer Gesellschafterrechte repraesentieren soll. Das bedeutet, dass der Verwaltungsausschuss der Degesch nur eine Einrichtung ist, die den Zweck und die Aufgabe hat, als Instrument fuer die Ausuebung der Gesellschafterrechte zu dienen. Seine Mitglieder haben infolgedessen nur die Rechte und Pflichten der von ihnen vertretenen Gesellschaften. Eine Aufsichtspflicht gegenueber der Geschaeftsfuehrung besteht daher auch nur in dem Umfang, wie sie in Par. 46 des G.m.b.H.-Gesetzes den Gesellschaftern auferlegt ist. Dieser Pflicht haben die Verwaltungsausschussmitglieder voll genuegt, indem sie die "Allrevisio" (Allgemeine Revisions- und Verwaltungs-A.G., Frankfurt am Main), eine altbewaehrte Revisionsgesellschaft, mit der laufenden Pruefung der Degesch betrauten.

(Exh. Degesch Nr. 23, 10 Dok. Nr. 50, 8 Bg. Deg. I
s. 96, 27
Vernehmung Hr. Goldschmidt Prot. e. S. 12873/74
d. S. 13077)

Der Verwaltungsausschuss ist also kein Gesellschaftsorgan der Degesch im juristischen Sinne. Als solches haette er in dem Gesellschaftsstatut der Degesch verankert sein muessen, was nicht der Fall ist. Er war auch niemals als solcher von seinen Gruendern gedacht.

(Vernehmung Mann Prot. e. S. 10470/71 d. S. 10 606)

Er ist vielmehr eine ausserhalb der gesellschaftsrechtlichen Organisation der Degesch von den Degesch-Gesellschaftern geschaffene Einrichtung, die den Zweck hatte

hatte, den aeuusseren Rahmen fuer eine Koordination der Gesellschafterinteressen zu bieten. .

(Exh.Degesch Nr. 4	Dok.Nr.55	Bd.Deg. I S.11/12
" " " 16	" " 54	" " I S.48/49
" " " 32	" " 56	" " IIS.29/30
" " " 35	" " 37	" " IIS.39

(Vernehmung Mann Prot.e.S. 10470 d.S.10 606).

Die Degesch-Gesellschafter uebten also lediglich ihre Gesellschafterrechte durch die von ihnen in den Verwaltungsausschuss entsandten Personen aus und benutzten gleichzeitig diesen Ausschuss als Koordinierungsorgan, dessen Funktionen sich uebrigens nicht auf Degeschangelegenheiten beschraenkten, sondern sogar ueberwiegend in der Besprechung von Fragen allgemeiner Bedeutung fuer die beteiligten Firmen bestanden.

(Vernehmung Mann Prot.e.S.10471 d.S. 10 607)

Wie sehr dies letztere der eigentliche Zweck des Verwaltungsausschusses war, ergibt sich schon aus der Tatsache, dass die beteiligten Firmen ihre leitenden Herren in den Verwaltungsausschuss der kleinen und unbedeutenden Degesch entsandt hatten. .

(Vernehmung Goldschmidt, Prot.e.S.12873/74
d.S.13077).

Dies wird ferner belegt durch ein zeitgenoessisches Dokument, die Aktennotiz des Angeklagten Wurster vom 20.6.1940, in der es heisst:

"Die Wahl leitender Herren der Scheideanstalt und I.G. in den Verwaltungsrat ist weniger der Degesch wegen durchgefuehrt worden, sondern weil dieses Gremium dazu geeignet ist, anlaesslich der Zusammenkuenfte die laufenden grundsatzlichen Fragen zwischen beiden Konzernen zu besprechen"

(Exh.Wurster Nr.220 Dok.W.548 DB Wurster VI
S.4-5).

Diese

Diese allein mögliche Auffassung von der rechtlichen und tatsächlichen Stellung des Verwaltungsausschusses zerschlägt die von der Anklage aus der Vertretung in diesem Ausschuss und aus der leitenden Stellung des Angeklagten Mann in ihm gezogenen Schlussfolgerungen. Der Verwaltungsausschuss als solcher hatte weder rechtlich noch tatsächlich einen Einfluss auf die Geschäfte. Die Geschäftsführung der Degesch war deren alleiniges und ausschliessliches Vertretungsorgan, das den Ablauf der Geschäfte bestimmte, ohne in diesem Aufgabenkreis durch den Verwaltungsausschuss irgendwie beeinträchtigt zu sein.

Die Art und Weise, wie der Verwaltungsausschuss während eines Zeitraumes von 14 Jahren gewirkt hat, bestäetigt diese Auffassung seiner rechtlichen und tatsächlichen Stellung. Es steht fest, dass der Verwaltungsausschuss niemals irgendeinen Einfluss auf die Geschäftsführung der Degesch genommen hat.

(Exh. Degesch Nr. 30 Dok. Nr. 33 Bd. Deg. II S. 23)
 { " " " 33 " " 37 " " S. 39)
 (Vernehmung Peters, Prot. e. S. 10632 d. S. 10 776)

Es gilt dies nicht nur fuer die laufende Geschäftsführung, sondern auch fuer jene Geschäfte, die aus diesem Rahmen heraustreten. Obwohl in die Zeit des Bestehens des Verwaltungsausschusses so wichtige Entscheidungen fallen, wie die Erweiterung des Tätigkeitsbereiches der Degesch durch die Neuaufnahme der sog. Kammerbegasungen

(Exh. Degesch Nr. 18 Dok. Nr. 14 Bd. Deg. I S. 64)

und die Einführung ganz neuer Entwässerungsverfahren

(Exh. Degesch Nr. 18 Dok. Nr. 14 Bd. Deg. Nr. I S. 64),

hat der Verwaltungsausschuss bei keiner dieser Entscheidungen

dungen mitgewirkt.

(Vernehmung Dr. Peters Prot. e. S. 10 540 d. S. 10 679
" Schlosser " " 10 512 " 10 648),

Sie wurden allein und selbstaendig von der Geschaefts-
fuehrung der Degesch getroffen, ohne dass der Verwaltungsausschuss von ihnen vorher auch nur unterrichtet wurde. Sie kamen den Mitgliedern des Verwaltungsausschusses bestenfalls nachtraeglich durch den jaehrlichen Geschaeftsbericht zur Kenntnis, teilweise unterblieb aber auch jede Unterrichtung, eben weil der Verwaltungsausschuss mit den Geschaeften nichts zu tun hatte. So hat man es z.B. seitens der Geschaeftsfuehrung nicht fuer noetig befunden, die Aufgabe der Degesch-Beteiligung an der Testa im Jahre 1942 und die mit dieser Aufgabe verbundenen Vereinbarungen zwischen der Degesch und der Testa den Verwaltungsausschussmitgliedern im Geschaeftsbericht fuer das Jahr 1942 auch nur in den Grundzuegen mitzuteilen .

(Ankl. Exh. 1773 Dok. NI 9093, Bd. 82 e. S. 131 d. S. 186).

Diese Tatsache ist besonders bemerkenswert, da es sich bei der Neuordnung der Beziehungen zwischen Degesch und Testa um eine Entscheidung von ueberaus weittragender Bedeutung handelte.

{ Vernehmung Heerdt, Prot. e. S. 10489 d. S. 10 626
" Peters " " 10540 " 10 679),
Exh. Degesch Nr. 55 Dok. Nr. 64, Nachtr. z. Bd. II)
Die einzige, wichtigere Entscheidung der Degesch, zu der vorher die Zustimmung des Verwaltungsausschusses eingeholt wurde, war der Erwerb eines eigenen Geschaeftshauses im Jahre 1941.

(Aussage Peters Prot. e. S. 10549 d. S. 10679
" Schlosser " " 10633 " 10776
" " " 10512 " 10648),

Die Tatsache, dass von den elf Verwaltungsausschussmitgliedern fuenf von der I.G. gestellt waren, hatt also keineswegs die Bedeutung, die ihr von der Anklage beigemessen wird, Sie bedeutet nicht, dass die I.G. innerhalb der Degesch den entscheidenden Einfluss besass.

cc) Die Degussa war die geschaeftsfuehrende Gesellschafterin der Degesch

Der tatsaechliche Einfluss der I.G. entsprach nicht einmal der Hoche ihrer Minderheitsbeteiligung von 42 1/2% an der Degesch. Die Zahl ihrer Vertreter in dem Verwaltungsausschuss bedeutete nichts in Anbetracht des Vorrangs, den einer der Gesellschafter, naemlich die Degussa, auf-grund ihrer historischen Beziehungen zur Degesch und auf Grund ihrer mit der I.G. getroffenen Vereinbarungen fuer sich in Anspruch nahm und auch tatsaechlich einnahm.

(Exh.Degesch Nr.28, Dok.Nr. 20, Bd.Deg.II S.18).

Die Degesch war bis zum Jahre 1930 ein reines Tochterunternehmen der Degussa, der saemtliche Stammanteile der Degesch gehoerten..

(Exh.Degesch Nr.3 Dok.Nr.3 Bd.Deg. I S.4-10
" " " 30 " " 33 " " II S.22)

Die Beteiligung der I.G. und der Th.Goldschmidt A.G. an der Degesch wurde dadurch veranlasst, dass sowohl die I.G. als auch die Th.Goldschmidt A.G. gasfoermige Schaedlingsbekaempfungsmittel entwickelt hatten, die eine Verteilerorganisation gleicher Art erforderten, wie sie die Degussa in langjaehriger Arbeit im In- und Ausland sich fuer ihr Zyklon B in der Degesch geschaffen hatte.

(Vernehmung...)

(Vernehmung Mann Prot.e.S.10466 d.S.10602
" Goldschmidt " " 12874/75 " 13078).

Beide Unternehmen beteiligten sich daher mit den von ihnen entwickelten Verfahren an der Degesch, die nunmehr eine gemeinsame Gesellschaft von Degussa, I.G. und Th.Goldschmidt A.G. wurde, an dem die beiden, erstgenannten je 42½ % und die Th.Goldschmidt A.G. 15 % des Stammkapitals besaßen.

(Exh.Degesch Nr.5 Dok.Nr. 7a Bd.Degesch I S.14
" " " 6 " " 7b " " I S.18
" " " 14 " " 6 " " I S.39).

Durch Hinzutritt der beiden neuen Partner änderte sich im Verhaeltnis der Degesch zur Degussa nichts. Sie behielt ihre Geschaeftsraeume in dem Geschaefts- haus der Degussa, ihre Buchfuehrung wurde wie frueher von der Buchfuehrungsabteilung der Degussa gefuehrt, und ihre Angestellten, die saemtlich aus dem Kreis der Degussa stammten, wurden nach den gleichen Grundsactzen entlohnt, wie die Angehoerigen der Degussa.

(Exh.Degesch Nr. 10, Dok.Nr. 8 Bd.Deg. I S.27
" " " 30 " " 33 " " II S.22)
(Vernehmung Schlosser Prot.e.S. 10516 d.S.10 652
" Mann " " 10467 d.S.10 603)

Auch sonst respektierten die beiden neuen Degeschpartner die Tatsache, dass sie in ein Unternehmen eingetreten waren, das seine Entwicklung ausschliesslich der Degussa verdankte. In einem Schreiben der Degussa an die I.G. vom 10.2.1930 heisst es:

" Wir waren uns bei den Verhandlungen darueber einig, dass durch Ihre Beteiligung an der Geschaeftsfuehrung der Degesch als solcher eine Aenderung nicht eintreten wird. "

(Exh.Degesch Nr.3, Dok.Nr.3, Bd.Deg.I S. 7).

Das

Das bedeutet, dass die Geschäftsführung der Degesch auch weiterhin von der Degussa gestellt und kontrolliert werden sollte,

(Exh. Degesch Nr. 33, Dok. Nr. 27 Bd. Deg. II S. 33/34)
Vernehmung Mann Prot. e. S. 10 467/68 d. S. 10 603/4)

Dieses Verhältnis der Degussa zu der Geschäftsführung der Degesch hat sich in den vierzehn Jahren der Beteiligung der I.G. an der Degesch nicht geändert. Nicht ein einziger tatsächlich amtierender Geschäftsführer, stellvertretender Geschäftsführer oder Prokurist der Degesch ist in dieser Zeit aus der I.G. hervorgegangen, sondern sie entstammen sämtlich dem Kreis der Degussa.

(Exh. Degesch Nr. 30 Dok. Nr. 33 Bd. Deg. II S. 22
" " " 66 " " 76 " " III S. 65)

Seitens der I.G. ist dieser historisch gerechtfertigte Vorrang der Degussa innerhalb der Degesch immer respektiert worden.

(Vernehmung Mann Prot. e. S. 10469/70 d. S. 10605)

Allerdings hat die Degussa innerseits auch darüber gemacht, dass seitens der übrigen Gesellschafter kein Eingriff in ihre Sonderrechte als "geschäftsführende Gesellschafterin" erfolgte. So hat sie z.B. im Jahre 1936 gegenüber Dr. Goldschmidt, dem Vertreter der Th. Goldschmidt A.G. in der Degesch, auf das Nachdrücklichste diese Sonderrechte geltend gemacht. In einem von dem damaligen Geschäftsführer der Degesch stammenden Bericht vom 30.3.1936

(Exh. Degesch 13, Dok. Nr. 47, Bd. Deg. I S. 37)

heißt es:

" Dieses Ansinnen wurde von Herrn Schlosser
fuer

"fuer die Scheideanstalt und von dem Unterzeichneten fuer die Geschaeftsfuehrung der Degesch abgelehnt und festgestellt, dass die Zahlen und sonstigen Unterlagen selbstverstaendlich den Gesellschaftern gemeinsam jederzeit zur Verfuegung stehen, jedoch nicht dem Beauftragten eines einzelnen Gesellschafters, und dass abgesehen hiervon die Scheideanstalt als geschaeftsfuehrende Gesellschafterin und die Geschaeftsfuehrung der Degesch selbst jede Diskussion ueber diesen Punkt ablehnen."

Es handelte sich hierbei nicht um die Majorisierung einer Minderheitenbeteiligung, sondern darum, dass die Degussa ihren begruendeten Anspruch auf eine bevorrechtigte Stellung in der Degesch zur Geltung brachte. Dr. Goldschmidt hat diesen Anspruch als berechtigt anerkannt.

(Vernehmung Goldschmidt Prot.c.S.12879 d.S. 13081)

Einen weiteren Fall, in dem die Degussa ihren Vorrang als geschaeftsfuehrende Gesellschafterin — diesmal der I.G. gegenueber — geltend machte, bezeugt der Zeuge Joseph Schmitt, Leiter der Abt. F in der Verkaufsgemeinschaft Pharmazeutika, in seiner eidesstattlichen Erklaerung vom 19.2.1948.

(Exh.Degesch Nr. 33 Dok.Nr.27 Bd.Deg.II S.33),

in der es u.a. heisst:

"Es bestand naemlich zwischen den Degesch-Gesellschaftern, Degussa (Herrn Schlosser), und I.G.Farben (Herrn Mann) eine Absprache, dass die Degussa auch fuer den I.G.-Anteil die unmittelbare Beratung und Kontrolle der Geschaeftsleitung der Degesch hatte und wahrnahm. Umgekehrt oblag der I.G.Farben-Verkaufsgemeinschaft Bayer die Kontrolle der Geschaeftsfuehrung der Chemie-Werk Homburg A.G., Frankfurt am Main, deren Aktienmajoritaet in der Hand der Degussa und I.G. Farben war. Auf diese Abmachung zwischen Degussa und I.G.Farben bezuegl. der Degesch hatte sich etwa im Jahre 1935, an den

an den genauen Zeitpunkt kann ich mich nicht mehr erinnern, anlaesslich eines Besuches bei der Degesch der seinerzeitige Geschäftsfuehrer der Degesch, Herr Stiege, ausdruecklich hingewiesen."

(Vergl. auch Vernehmung Mann, Prot. e. S. 10470, d. S. 10606)

Die Schlusselfeststellung innerhalb der Degesch besass also nicht die I.G., sondern die Degussa:

(Exh. Degesch Nr. 30, Dok. Nr. 33 Bd. Deg. II S. 22
" " " 28 " " 20 " " II S. 18.
Vernehmung Schlosser, Prot. e. S. 10524, 10526/27, d. S. 10661, 10665).

Der Verwaltungsausschuss mit seiner paritaetischen Besetzung durch Degussa und I.G. Vertreter war also nur eine aeuss erliche Konzession der Degussa an die Tatsache der I.G. Beteiligung an der Degesch. Praktische Konsequenzen wurden hieraus jedoch nicht gezogen.

dd) Die Geschäftsfuehrerstellung des Angeklagten M a n n von 1930 - 1940 war rein formaler Natur und mit keinerlei Geschäftsfuehrertaetigkeit verbunden.

Diesen Ausfuehrungen widerspricht nicht die Tatsache, dass der Angeklagte Mann von 1930 bis 1940 Geschäftsfuehrer der Degesch war. Sie bestaetigt vielmehr nur die getroffenen Feststellungen, wenn man die Geschäftsfuehrerstellung des Angeklagten Mann einer naecheren Pruefung unterzieht, und sie in ihrer tatsächlichen Bedeutung fuer die Geschäftsfuehrung der Degesch richtig erkennt.

(Exh. Degesch Nr. 30 Dok. Nr. 33 Bd. Deg. Nr. II S. 22
" " " 66 " " 76 " " III " 65)

Die Bestellung des Angeklagten Mann zum Geschäftsfuehrer hat praktisch an den bestehenden Einflussverhaeltnissen innerhalb der Degesch nichts geaendert.

Es bestand

Es bestand gegenseitiges Einvernehmen darueber, dass Mann als Geschaeftsfuehrer weder eine Verguetung erhalten noch eine Taetigkeit entfalten sollte und durfte. Seine Bestellung zum Geschaeftsfuehrer war lediglich darauf zurueckzufuehren, dass Schlosser, ein Vorstandsmitglied der Degesch, 1930 beim Eintritt der I.G. in die Degesch, deren Geschaeftsfuehrer war und infolgedessen aus Gruenden der formalen Paritaet die Bestellung eines Vorstandsmitgliedes der I.G. zum Mitgeschaeftsfuehrer wuenschte..

(Vernehmung Schlosser Prot.e.S.10511 d.S.10 647).

Mann " " 10468/69 "10604/5).

Die Wahl fiel auf das Vorstandsmitglied der I.G. Mann, da dieser die Verkaufsgemeinschaft Bayer leitete, der die Abteilung Schaedlingsbekaempfung unterstellt war.

Die Bedeutung und Art dieser Geschaeftsfuehrung des Angeklagten Mann ergibt sich deutlich aus einer Notiz des Geschaeftsfuehrers Stiege der Degesch vom 14.4.1934, in der es u.a. heisst:

"Abschliessend brachte Direktor Mann seine Genugtuung ueber die erfolgreiche Arbeit zum Ausdruck und betonte vor allem, dass er nicht aus Mangel an Interesse die Geschaeftsfuehrung der Degesch in seiner Eigenschaft als ehrenamtlicher Geschaeftsfuehrer nur in ganz grossen Zuegen verfolge, sondern aus der Ueberzeugung, dass sie bei den hauptamtlichen Geschaeftsfuehrern in den besten Haenden sei."

(Exh.Degesch Nr.11, Dok.Nr.46 Bd.Deg.I S.31).

Ebensowenig wie als ehrenamtlicher Geschaeftsfuehrer der Degesch hatte der Angeklagte Mann als Vorsitzender des Verwaltungsausschusses, welche Stellung er von 1940 an einnahm,

(Exh.Degesch Nr.18, Dok.Nr.14, Bd.Deg.I S.55)

einen tatsaechlichen Anteil an der Geschaeftsfuehrung der

der Degesch. Die beschriebene und durch unzweideutige Beweisstücke belegte Stellung des Verwaltungsausschusses beschränkte seinen Vorsitzenden auf die gleiche formale Beteiligung an den Angelegenheiten der Degesch wie die übrigen Mitglieder dieses Ausschusses. Da er in seiner Gesamtheit infolge der tatsächlichen Einflussverteilung innerhalb der Degesch praktisch keine Einwirkung auf die Geschäftsführung hatte, konnte auch sein Vorsitzender keinen aktiven Einfluss auf Einzelheiten wie auf die Gesamtlinie der Degesch-Geschäftsführung ausüben.

Die Umstände, unter denen die Ernennung des Angeklagten Mann zum Vorsitzenden des Verwaltungsausschusses erfolgte, unterstreichen noch den nur rein formalen Charakter dieser Stellung. In der Chemiewerk Homburg A.G. besaßen Degussa und I.G. ein weiteres gemeinsames Unternehmen, bei dem die Verhältnisse umgekehrt wie bei der Degesch lagen. Die I.G. hatte die Führung, während die Degussa sich auf ihre kapitalmässige Beteiligung beschränkte. Die Degussa stellte lediglich aus Gründen der formalen Parität den Vorsitzenden des Aufsichtsrates. Nur um bei der Degesch ein entsprechendes Verhältnis formaler Parität herzustellen, erfolgte hier, wo die Degussa die Führung besass, die Bestellung des Angeklagten Mann zum Vorsitzenden des Verwaltungsausschusses.

(Exh. Degesch Nr. 17	Dok. Nr. 13	Bd. Deg. I S. 51
" " " 31	" " 34	" " II " 25
" " " 33	" " 27	" " II " 33
Vernehmung Schlosser Prot. e. S. 10511	d. S. 10	647
" Mann	" 10614	" 10 758
	bis 10615	bis 10 759
	10668	bis 10 604)
	bis 10670	bis 10 606).

- c) Der Angeklagte Mann hat sich weder als Vorsitzender des Verwaltungsausschusses noch in sonstiger Eigenschaft in die Geschäftsführung der Degesch eingemischt.

Die Anklage versucht nachzuweisen, dass trotz dieser nur formalen Stellung des Verwaltungsausschusses der Angeklagte Mann ein aktives Interesse an der Degesch hatte und dieses durch rege Beteiligung an den Angelegenheiten der Degesch verwirklichte. Es ist bezeichnend, dass die Anklage nur eine geringe Anzahl von Dokumenten fuer diese Behauptung vorzulegen imstande war, und dass sie bis in das Jahr 1936 zurueckgreifen musste, um die spaerliche Anzahl von Dokumenten aus neuerer Zeit ein wenig an Gewicht und Ansehen gewinnen zu lassen. Es handelt sich hierbei um die Dokumente:

Exh. 2099	NI 15056	Exh. 2100	NI 15052
" 2102	" 13780	" 2103	NI 15053
" 2106	" 15057	" 2107	NI 15051
" 2109	" 150600	" 2101	NI 15033
" 2105	" 15034	" 2108	NI 15055

die von der Anklage saemtlich beim Kreuzverhoer Mann vorgelegt wurden.

Unter ihnen befindet sich nicht ein einziges, aus dem sich mehr als eine nur formale Teilnahme des Angeklagten Mann an der Degesch ergibt. Wenn eines dieser Dokumente ein Interesse des Angeklagten Mann an einer durchgefuehrten Schiffsbegasung erkennen laesst

(Exh. 2108 NI 15055),

so ist das kein Umstand, der irgendwelche Schluesse auf den Einfluss des Angeklagten Mann innerhalb der Degesch und sein aktives Interesse an dieser zulaesst.

Bei den

Bei den uebrigen Dokumenten handelt es sich um Korrespondenz, die sich auf reine Formalien wie Gesellschafterversammlungen, Verwaltungsausschussitzungen und aehnliche Routineangelegenheiten bezieht, und die daher gleichfalls weder ein aktives Interesse, noch viel weniger einen Einfluss des Angeklagten Mann auf die Geschaeftsfuehrung der Degesch beweisen. Das Gericht hat diesen Umstand bereits bei der Beweisvorlage erkannt und wortlich bemerkt: "

"Es ist angesichts des Zeitverlusts von sehr zweifelhaftem Wert, dieses Protokoll mit einer Reihe von Dokumenten zu ueberlasten, um zu zeigen, dass Geschaeftssitzungen stattfanden, an denen Personal teilnahm oder die die Finanzen betrafen."

(Prot.e.S. 10 620 d.S. 10 763).

Gleichwohl ist diese Beweisvorlage der Anklage nicht ohne Wert. Er liegt allerdings in einer ganz anderen Richtung, als es die Anklage bezweckt. Es ist eine Tatsache, die fuer sich spricht, wenn die Anklage aus dem ganzen Zeitraum der Verbindung der I.G. mit der Degesch, der immerhin vierzehn Jahre betraegt, nur eine so geringe Anzahl von Dokumenten vorzulegen vermag, von denen nicht ein einziges eine aktive Einmischung des Angeklagten Mann in die Angelegenheiten der Degesch erkennen laesst. Es ist dies die beste Bestaetigung der Aussage des Angeklagten Mann in seinem Kreuzverhoer durch den Staatsanwalt, in der es heisst:

"..... und ich habe in den 5 Jahren von 1940 - 1945 ausser den Geschäftsberichten vi vielleicht im Ganzen zwei oder drei Briefe bekommen, wovon der eine Hausangelegenheiten betraf und der andere, das kann ich nicht mehr

mehr sagen. Formsachen wegen der Bilanz usw."...

(Vernehmung Mann Prot.e.S.10 615 d.S.10759).

Diese Aussage wird wirkungsvoll ergänzt und be-
stätigt durch die Bekundung des Geschäftsführers
der Degesch, Dr. Peters, zu der in seiner Direkt-
vernehmung an ihn gerichteten Frage:

" F.: Welche Beziehungen bestanden zwischen
Ihnen und Herrn Mann, dem Vorsitzenden des
Verwaltungsausschusses?

A.: Praktisch keine Beziehungen. Ich sah
ihn nur während der sehr wenigen Ver-
waltungsausschuss-Sitzungen in Frankfurt,
an denen ich teilnahm und einmal habe ich
ihn zu Kriegsende in Leverkusen aufge-
sucht."

(Vernehmung Peters Prot.e.S.10529 d.S. 10668).

Auf den Vorhalt des Gerichts, dass die beidem Kreuz-
verhoer des Angeklagten Mann eingebrachten Dokumente
ueber die unbestrittene Tatsache der formalen Teil-
nahme des Angeklagten Mann an der Degesch hinaus
nichts beweisen .

(Prot,e.S. 10 621 d.S.10 764)

hat die Anklage auf ihre schwierige Beweislage hin-
gewiesen, die auf die absichtliche Vernichtung zahl-
reicher als Beweismittel in Betracht kommender Do-
kumente zurückzuführen sei, .

(Prot.e.S. 10 621 d.S. 10 764).

Dazu ist festzustellen, dass in Leverkusen nicht ein
einziges Dokument, das die Beziehungen zwischen
der Verkaufsgemeinschaft Bayer und der Degesch zum
Gegenstand hat, vernichtet worden ist, .

(Exh.Degesch Nr.71 Dok.Nr.82 Bd.Deg.III S.72
" " " 65 " " 75 " " " 63
" " " 74 " " 85 " " " 79)

und

und dass bei der Degesch lediglich durch Bombenschäden, nicht aber durch willkuerlichen Eingriff Dokumente zerstört wurden. Aber auch bei der Degesch blieben die wichtigeren Dokumente erhalten, da sie in dem Safe der Degussa verwahrt waren. Sie wurden dort von der Anklage aufgefunden und beschlagnahmt.

(Exh. Degesch Nr. 68 Dok. Nr. 78 Bd. Deg. III S. 69
" " " 73 " " 84 " " " S. 77),

Die von der Anklage vorgelegten Dokumente sind also nicht ein kleiner Rest aus einem zum groessten Teil vernichteten Dokumentenbestand, sondern sie enthalten, soweit die eine Seite, naemlich Bayer-Leverkusen, in Betracht kommt, restlos alles, was in den Beziehungen des Angeklagten Mann zur Degesch jemals einen schriftlichen Niederschlag gefunden hat.

Die Verbindung des Angeklagten Mann wie auch der uebrigen I.G. Vertreter im Verwaltungsausschuss der Degesch beschränkte sich also auf ihre formale Stellung als Mitglieder dieses Verwaltungsausschusses. Die I.G. Vertreter in der Degesch haben infolgedessen keinen aktiven Einfluss auf die Zyklonlieferungen, insbesondere nicht auf solche, an die SS und an die KZ's genommen, noch einen derartigen Einfluss ueberhaupt nehmen koennen.

d.) Die behoerdliche Lenkung des Zyklonabsatzes waehrend des Krieges.

Die Moeglichkeit einer solchen Einflussnahme entfiel vollends, nachdem die ganze Lenkung des Zyklonumsatzes in die Haende des staatlichen Arbeitsausschusses fuer Seuchenabwehr uebergegangen war.

(Vernehmung Reuscher Prot. S. 8: 10558
S. 9: 10689)

(Vernehmung Goldschmidt Prot. e.S. 12894
a.S. 13096.).

Obwohl der Geschäftsführer der Degesch, Dr. Peters, zugleich Leiter dieses Ausschusses war, war er in dieser behördlichen Eigenschaft von den Gesellschaftern und Verwaltungsausschussmitgliedern der Degesch völlig unabhängig.

e.) Die Verwaltungsausschussmitglieder waren nicht verpflichtet, sich im einzelnen um den Zyklonabsatz zu kümmern.

Die dargelegte Art der Beteiligung der I.G. an der Degesch schloss also jede aktive Teilnahme an der Geschäftsführung aus. Die I.G. Vertreter haben infolgedessen zu keinem Zeitpunkt auch nur den Versuch unternommen, auf diese irgendeinen Einfluss zu nehmen. Es bestand hierzu kein Anlass, da das alteingespielte Verhältnis zwischen Degesch und Derussa die Gewähr für eine einwandfreie Geschäftsführung bot.

Ausserdem bestanden behördliche Vorschriften, die eine polizeiliche Zuverlässigkeitsprüfung der im Zyklongeschäft tätigen Personen anordneten.

(Vernehmung Dr. Peters Prot. e.S. 10529 a.S. 10667
" Rauscher " " 10558 a.S. 10698/99) /

Der von Dr. Peters geleitete Ausschuss für Seuchabwehr und Raumentwesung hatte mit dieser sicherheitspolizeilichen Überwachung nichts zu tun.

(Exh. Degesch Nr. 70 Dok. Nr. 41 Bd. Deg. III S. 73
Vernehmung Rauscher, Prot. e.S. 10558 a.S. 10698)

Keinem der Angeklagten kam daher der Gedanke oder konnte auch nur der Gedanke kommen, dass das Zyklon B zu verbrecherischen Zwecken missbraucht wurde.

(Exh....)

(Exh. Degesch Nr. 16 Dök. Nr. 54 Bd. Deg. I, S. 49
 " " " 27 " " 23 " " II S. 13
 " " " 20 " " 28 " " II S. 18)

Der Zeuge Goldschmidt hat diese Situation in seinem
 Kreuzverhoer sehr treffend geschildert:

(Prot. e. S. 12 375 d. S. 13078)

"A.: Natuerlich ist Zyklon , d.h. 'Blauseaure,
 ein auesserst gefaehrliches Gift. Deshalb
 mussten auch seitens der Degesch sehr genaue
 behoerdliche Sicherheitsvorschriften beachtet
 werden. Aber es war doch ein schon seit Jahr-
 zehnten eingefuehrtes Schadlingsmittel. Es
 hatte sich bewaehrt, und soweit mir bekannt,
 ist es niemals zu verbrecherischen Zwecken
 missbraucht worden. Der Gedanke an einen ver-
 brecherischen Missbrauch lag voellig ausser-
 halb unseres Vorstellungs- und Erfahrungsbe-
 reiches. Die Situation ist durchaus vergleich-
 bar dem Verkauf von sonstigen Giften. Es
 muessen sehr genaue behoerdliche Vorschriften
 beachtet werden. Trotzdem koennen diese nicht
 immer einen Missbrauch verhindern..... "

Nur dann, wenn der Verdacht eines verbrecherischen
 Zyklonmissbrauchs aufgetaucht waere, haetten die ange-
 klagten Verwaltungsausschussmitglieder die Pflicht ge-
 habt, auf den Zyklonabsatz im einzelnen Einfluss zu
 nehmen,

B. DEN ANGEKLAGTEN WAR DER ZYKLONMISSBRAUCH
DER SS UNBEKANNT.

Die Prosecution versucht durch einen weit ausholenden Indizienbeweis darzulegen, dass den Angeklagten und unter diesen insbesondere den Mitgliedern des Verwaltungsausschusses der Degesch der verbrecherische Zyklonmissbrauch der SS bekannt war. Dieser Beweis ist gescheitert. Kein vernünftiger Mensch kann aus den Umständen, auf die sich die Beweisführung der Prosecution stützt, eine Kenntnis der Angeklagten von der missbräuchlichen Verwendung des Zyklon durch die SS im Konzentrationslager Auschwitz herleiten. Weder in ihrer Gesamtheit, noch fuer sich allein betrachtet, ergeben die von der Prosecution zusammengetragenen Indizien auch nur einen begründeten Verdacht in dieser Richtung.

Die Kenntnis der Angeklagten von der Verwendung des Zyklon zur Durchführung von Massentötungen soll sich nach Auffassung der Prosecution aus folgenden Tatsachen ergeben:

- 1) Die Degesch lieferte durch die Testa
"phantastische Mengen"
Zyklon an das Konzentrationslager Auschwitz,
der Umfang dieser Lieferung war der Degesch bekannt, da Versandanzeigen sämtlicher Zyklonlieferungen an sie ergingen.
- 2) Die Degesch lieferte unmittelbar Zyklon an SS-Stellen, obwohl dies nur ueber den Heeressanitätspark erfolgen durfte.

- 3) Die Direktlieferungen an die SS verstießen ausserdem gegen vertragliche Vereinbarungen mit der Testa, die das alleinige Belieferungsrecht fuer die ostelbischen Gebiete besass.
- 4) Den SS-Stellen wurde reizstoffloses Zyklon durch die Degesch geliefert.

a) Die Mitglieder des Verwaltungsausschusses hatten keine Kenntnis von den Einzelheiten der Geschäftsfuehrung.

Keine dieser Tatsachen war den Angeklagten bekannt. Es handelt sich bei ihnen um ausgesprochene Einzelheiten der internen Geschäftsfuehrung der Degesch, die schon ihrer Natur nach demjenigen, der nur ein rein kapitalmaessiges Interesse an einem Unternehmen besitzt, selbst dann, wenn er Mitglied eines regulären Aufsichtsrates ist, nicht zur Kenntnis kommen.

(Vernehmung Goldschmidt Prot. e. S. 12896/97
d. S. 13100)

Eine Unterrichtung der Mitglieder des Verwaltungsausschusses ueber derartige Einzelheiten des Geschäftsablaufs der Degesch war niemals ueblich ist auch in der hier in Betracht kommenden Zeit nicht erfolgt.

(Exh. Degesch Nr. 34	Dok. Nr. 36	Bd. Deg. II	S. 36
" " " 35	" " " 37	" " " "	" 39
" " " 36	" " " 39	" " " "	" 40
" " " 13	" " " 47	" " " "	" 35
" " " 16	" " " 54	" " " "	" 47
" " " 30	" " " 33	" " " "	" 22
Vernehmung Schlosser	Prot. e. S. 10511	d. S. 10	
" Peters	" " 10632	" 10	

Der einzir

Der einzige unmittelbare, persönliche Kontakt zwischen I.G. und Degesch waren die Sitzungen des Verwaltungsausschusses und die Gesellschafterversammlungen, die regelmässig zusammenfielen.

(Exh. Degesch Nr. 18 Dok. Nr. 14, Bd. Deg. I S. 55)

Die letzte Verwaltungsausschusssitzung (für das Geschäftsjahr 1939) fand im Jahre 1940, die letzte Gesellschafterversammlung (für das Geschäftsjahr 1941) im Jahre 1942 statt.

(Exh. Degesch Nr. 19 Dok. Nr. 45 Bd. Deg. I S. 66-69
" " " 21 " " 15 " " I S. 71
" " " 18 " " 14 " " I S. 53
" " " 36 " " 39 " " IIS. 40
" " " 34 " " 36 " " IIS. 36
" " " 32 " " 56 " " IIS. 27

Vernehmung Mann Prot.	e. S. 10471/73
" Peters "	d. S. 10606/609
	e. S. 10634
	d. S. 10777

Im uebrigen beschränkten sich die Beziehungen zwischen der Degesch und der I.G. von 1942 bis 1945 auf einen sehr spärlichen Briefwechsel ueber Gegenstände allgemeiner Natur und auf die Uebersendung der jährlichen Geschäftsberichte,

(Exh. Degesch Nr. 56 Dok. Nr. 65 Bd. Deg. III S. 1
" " " 57 " " 66 " " S. 18
" " " 58 " " 67 " " S. 34
" " " 59 " " 68 " " S. 50

Ankl. Exh. 17 73 NI 9093 Bd. 32 e. S. 137)

sowie der monatlichen Umsatzmeldungen.

(Exh. Degesch Nr. 22 Dok. Nr. 26 Bd. Deg. I S. 74).

Aus keiner dieser allein und ausschliesslich zur Verfügung stehenden Informationsquellen ergab sich etwas ueber die Testa-Lieferungen an SS-Stellen, ueber den Umfang dieser Lieferungen und ueber die vertragswidrigen Direktlieferungen an solche Stellen unter Verlassung des Reizstoffes.

(Ankl.

(Ankl. Exh. wie Seite 26 zitiert).

Alles, was an Korrespondenz zwischen der Degesch und der Verkaufsgemeinschaft Bayer existiert, ist der Prosecution zur Kenntnis gekommen. Eine Vernichtung von Unterlagen dieser Art ist nicht erfolgt.

(Exh. Degesch	Nr. 65	Dok. Nr. 75	Bd. Deg. III	S. 63
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"
"	"	"	"	"

Kein einziges dieser Dokumente enthaelt Informationen, die auch nur auf Umwegen eine Kenntnis der angefuhrten Tatsachen vermitteln konnte. Wenn die Prosecution mit diesem Dokumentenmaterial nachweisen will, dass ausser den Gesellschafterversammlungen und den Sitzungen des Verwaltungsausschusses Zusammenkuenfte aller Art zwischen I.G.-Vertretern und Degesch-Leuten stattfanden, so ergibt gerade das von ihr ueberreichte Material, dass solche Zusammenkuenfte nach 1942 nicht mehr stattfanden.

(Ankl. Exh. 2100 Dok. NI 15052).

Selbst wenn man daher unterstellt, dass solche Zusammenkuenfte eine zusaetzliche Moeglichkeit der Information ueber die Degesch bedeuteten, so ergibt sich hieraus nichts fuer eine Kenntnis der I.G. von den Direktlieferungen reizstofflosen Zyklons an SS-Stellen, denn diese Lieferungen begannen ueberhaupt erst Juni 1943.

(Ankl. Exh. 1769 NI 7278 Bd. 83 S. 10 engl.)

Darueber hinaus waren die fraglichen Zusammenkuenfte ihrer Natur nach ueberhaupt nicht geeignet, der I.G. einen Einblick in die Einzelheiten der Degesch -

Geschaefts-

Geschäftsführung zu verschaffen. Es handelt sich in einem Zeitraum, der von 1935 bis 1942 reicht, um eine sog. Degesch-Besprechung zwischen Degussa und I.G. in Leverkusen vom 15.3.1935 -

(Ankl.Exh. 2099, NI 15056)

die einzige dieser Art, die je stattfand.-

(Vernehmung Mann Prot.o.S. 10616 d.S. 10760)

die sog. Techniker-Besprechung, der am Begasungsgesellschaft beteiligten Firmen, die vor dem Kriege stattfanden

(Ankl.Exh.2101 NI 15033)

(betr. eine Hamburger Tagung vom Jahre 1937)

und um eine Bilanzvorbesprechung innerhalb der Verkaufsgemeinschaft Bayer-Leverkusen vom 10.6.1941.

(Ankl.Exh. 2100 NI 15052)

Die Prosecution hat nicht den mindesten Beweis dafür erbracht, dass auf diesen wenigen und sich ueber einen grossen Zeitraum verteilenden Zusammenkueften Einzelheiten der Geschäftsführung der Degesch, insbesondere Einzelheiten des der I.G. fremden Zyklongeschäftes, besprochen wurden. Abgesehen davon, dass ein solches Eingehen auf geschäftliche Einzelheiten voellig ausserhalb des ueblichen Rahmens derartiger Zusammenkuefte gelegen haette,

(Vernehmung Mann, Prot.o.S. 10626 d.S. 10 762)

widersprach es auch der von der Degussa verfolgten Tendenz, die uebrigen Degeschpartner moeglichst von einem allzu eingehenden Eindringen in die Degesch-Angelegenheiten fernzuhalten.

Die Beweis-

Die Beweisfuehrung der Anklage beruht also auf einer unrichtigen Voraussetzung. Sie unterstellt, dass die I.G. vollen Einblick in die Degesch besass und selbst ueber so ausgesprochene Einzelheiten des Geschaeftsverlaufs wie einzelne Lieferungen, unterrichtet war. Dies war jedoch nicht der Fall.

(Exh. Degesch Nr. 30	Dok. Nr. 33	Bd. Deg. II	S. 22
" " " 34	" " 36	" " II	S. 36
" " " 36	" " 39	" " II	S. 40
" " " 37	" " 38	" " II	S. 42

Vernehmung Mann Prot. e. S. 10622, 10473

d. S. 10766, 10609

" Goldschmidt Prot. e. S. 12878/79

d. S. 13081

Infolgedessen war es den angeklagten Verwaltungsausschussmitgliedern unbekannt, dass die Degesch von ihren Vertreterfirmen Heli und Testa Kopien der Versandanzeigen ueber die einzelnen Zyklonverkaeufe erhielt und dadurch wusste, an wen die Lieferungen erfolgten.

(Vernehmung Mann Prot. e. S. 10473 d. S. 10 609)

Damit entfallen aber die Schlussfolgerungen, die von der Prosecution gegen die Angeklagten aus dem Umfang der ueber die Testa an Auschwitz gemachten Lieferungen wie auch aus der Tatsache der Direktlieferungen reizstofflosen Zyklons an SS-Stellen gezogen werden. Diese Tatsachen waren der I.G. unbekannt.

(Vernehmung Mann Prot. e. S. 10 475 d. S. 10 611).

Die sie in der Degesch vertretenden Angeklagten hatten mit diesen Lieferungen nicht das Mindeste zu tun. Sie scheiden infolgedessen als Indizien fuer eine Kenntnis der Angeklagten von dem Auschwitzer Zyklon-Missbrauch von vornherein aus.

b)

- b) Selbst eine Kenntnis aller Einzelheiten der Degeschgeschäftsführung brauchte keinen Verdacht auf verbrecherischen Zyklonmissbrauch durch die SS zu wecken.

Aber selbst wenn sich die Verwaltungsausschussmitglieder der Degesch laufend ueber alle Einzelheiten des Geschäftsablaufs der Degesch informiert und sie dadurch von dem Umfang der Testa-Lieferungen nach Auschwitz und den Direktlieferungen reizstofflosen Zyklons an Gerstein bzw. Auschwitz Kenntnis erhalten haetten, so musste dies keineswegs einen Verdacht erwecken oder gar notwendig zu der Annahme fuehren, dass seitens der SS das Zyklon zu Verbrechen missbraucht wurde.

Die grossen Lieferungen von Zyklon nach Auschwitz ueber die Testa fanden in dem Charakter des Auschwitzer Lagers als Aufnahmelager fuer den Osten und den Suedosten eine verstaendliche Erklaerung. Die starke Verlausung der aus diesen Gebieten stammenden Menschen bedeutete eine besonders hohe Fleckfiebergefahr, der unbedingt energisch entgegengetreten werden musste.

(Vernehmung Peters Prot.e.S. 10549 d.S.10689)

Daraus errieb sich ein besonders hoher Bedarf an Zyklon B als dem wirksamsten Fleckfieber Bekämpfungsmittel. Dieser Bedarf war nicht gebunden an Vorhandensein von Entlausungskammern, die in Auschwitz erst 1941 errichtet wurden. Der grossere Zyklonbedarf bestand fuer Zwecke der Entwesung von Unterkunftsräumen, Magazinen usw. Damit fanden die Zyklonlieferungen nach Auschwitz im Jahre 1941 ohne

weiteres

weiteres ihre natuerliche Erklærung.

(Vernehmung Rauscher Prot.e.S.10562 d.S.10702).

Das Weglassen des Reizstoffes war ebenfalls keineswegs verdæchtig. Weder sieht das der Zyklonherstellung zugrundeliegende Patent einen Reizstoffzusatz vor,

(Exh.Degesch Nr. 2 Dok.Nr. 2 Bd.Deg.I S.2/3

Vernehmung Heerdt Prot.e.S.10507 d.S.10644)

noch ist ein solcher durch gesetzliche Bestimmungen zwingend vorgeschrieben.

(Exh.Degesch Nr. 38 Dok.Nr.40 Bd.Deg.Nr.II S.44/45).

Fuer Sonderzwecke wie fuer Lebens- und Genussmittelentwesung waren auch schon fruher Lieferungen reizstofflosen Zyklons erfolgt.

(Vernehmung Rauscher, Prot.e.S.10563/64
d.S.10704)

Wie unverfaenglich die Lieferung reizstofflosen Zyklons infolgedessen war, zeigt die Tatsache, dass sogar fachwissenschaftliche Veroeffentlichungen ueber die Erfahrungen mit reizstofflosem Zyklon berichteten.

(Exh. Deg.Nr.39 Dok.Nr.30 Bd.Deg.II S. 46).

Es konnten produktionstechnische Schwierigkeiten vorliegen, die zu einer voruebergehenden Herstellung reizstofflosen Zyklons zwangen. Tatsaechlich trat dieser Fall im Mai 1944 ein, von welchem Zeitpunkt an ueberhaupt nur noch reizstoffloses Zyklon hergestellt wurde.

(Exh.Degesch Nr.40 Dok.Nr.52 Bd.Deg.II S.47
" " " 41 " " 29 " " " S.48
" " " 42 " " 28 " " " S.49
" " " 43 " " 51 " " " S.50
" " " 61 " " 69 " " " S.57).

Direktlieferungen reizstofflosen Zyklons unter Umgehung von Testa und Heli kamen auch sonst noch wie z.B. bei Sonderlieferungen an die Wehrmacht.

(Exh.Degesch Nr. 60 Dok.Nr.51 Nachtr.Bd.II).

Selbst ein auf dem Gebiet des Zyklongeschäfts so erfahrener Fachmann wie der Zeuge Heerdt, der Erfinder des Zyklons und langjähriges Mitglied des Verwaltungsausschusses der Degesch, hat bei seiner Befragung erklärt, dass weder eine Kenntnis der Testalieferungen nach Auschwitz noch die Kenntnis der Lieferung reizstofflosen Zyklons an SS-Stellen (Gerstein) bei ihm den Verdacht erregt hätten, die betreffenden Zyklonmengen seien zur Tötung von Menschen bestimmt.

(Vernehmung Heerdt, Prot. e.S.10 493 d.S.10 6

Wenn aber selbst einem Experten wie dem Zeugen Heerdt die Testalieferungen an Auschwitz und die Lieferung reizstofflosen Zyklons an SS-Stellen unverfänglich erschienen waren, um wieviel weniger konnte dann aber bei den I.G. Vertretern in der Degesch, die mit dem Degussa-Produkt Zyklon nichts zu tun hatten, eine solche Kenntnis — die jedoch nie bestand — den Verdacht eines verbrecherischen Zyklon-Missbrauchs auslösen.

Es kommt noch hinzu, dass Dr. Heerdt persönliche Erfahrungen unangenehmster Art mit dem Nazi-regime gemacht hatte. Sowohl Dr. Heerdt, wie auch seine Ehefrau, wurden wegen ihres juedischen Verkehrs im Jahre 1941 von der Gestapo laengere Zeit in Haft genommen. Dr. Heerdt wurde nach seiner Ent-

lassung

lassung zur Aufgabe seiner Stellung und seines Wohnsitzes gezwungen.

(Vernehmung Heerdt, Prot.e.S. 10488/89
d.S. 10624/25)

Trotz des sich hieraus ergebenden starken Misstrauens gegen den nationalsoz. Staat und insbesondere gegen alle SS-Stellen, hat der Zeuge Heerdt niemals auch nur entfernt an die Möglichkeit eines verbrecherischen Zyklonmissbrauchs gedacht. Dies ist nicht etwa darauf zurückzuführen, dass der Zeuge nach seinem Wegzug aus Frankfurt/Main im Jahre 1941 den Kontakt mit der Degesch verlor. Es standen ihm nach wie vor die gleichen Informationsmöglichkeiten zur Verfügung, wie den übrigen Mitgliedern des Verwaltungsausschusses.

(Vernehmung Heerdt, Prot.e.S. 10492 d.S. 10629)

Der Angeklagte Mann hat weder jemals ein Konzentrationslager betreten, noch ^{auch} nur einen Menschen gesprochen, der persönliche Eindrücke aus einem solchen berichten konnte.

(Vernehmung Mann Prot.e.S. 10475/76 d.S. 10612)

Der Zeuge Heerdt hingegen besuchte im Jahre 1941 aus geschäftlichen Gründen die Konzentrationslager Buchenwald und Mauthausen.

(Vernehmung Heerdt, Prot.e.S. 10494/96
d.S. 10631/33).

Aber selbst diese unmittelbare Berührung des Zeugen Heerdt mit Konzentrationslagern hatte ihn nach seiner Bekundung im Zeugenstand, nicht mit Misstrauen wegen des Zyklonverbrauchs durch die SS erfüllt.

Noch viel weniger Anlass zu einem solchen Misstrauen

besaßen

besaßen also die Angeklagten I.G. Vertreter in der Degesch, denen eine solche persönliche Beziehung zu der Einrichtung der Konzentrationslager fehlte.

In diesem Zusammenhang verdient hervorgehoben zu werden, dass das Amtsgericht Frankfurt am Main den stellvertretenden Geschäftsführer der Degesch, Kaufmann, der unter der Beschuldigung der Beteiligung an den Zyklonmorden in Haft genommen worden war, mangels dringenden Tatverdachts wieder auf freien Fuß gesetzt hat. Das Gleiche gilt von Dr. Raasch, dem damaligen Prokuristen der Degesch.

(Exh. Degesch Nr. 63 Dok. Nr. 80 Bd. Deg. III S. 53a).

Das Amtsgericht Frankfurt am Main hat also die Kenntnis des Zyklonmissbrauchs durch die SS bei Personen verneint, die als stellvertretender Geschäftsführer bzw. als Prokurist vollen Einblick in die Einzelheiten des Geschäftsablaufes der Degesch hatten und die infolgedessen auch die Zyklonlieferungen der Degesch an Gerstein und Auschwitz kannten. Auch der ehemalige Vorsitzende des Vorstands der Degussa, Schlosser, dessen Verbindung mit der Degesch enger war als die Verbindung eines jeden der Angeklagten mit dieser, ist durch Beschluss der Strafkammer des Landgerichts Frankfurt am Main mangels dringenden Tatverdachts auf freien Fuß gesetzt worden. Gegen den Zeugen Dr. Heerdt, der sich der Frankfurter Staatsanwaltschaft selbst gestellt hat, ist nicht einmal ein Ermittlungsverfahren eingeleitet worden.

(Exh. Degesch Nr. 62 Dok. Nr. 73 Bd. Deg. III S. 53).

Die Frankfurter Gerichte sind also der Auffassung, dass selbst eine weit genauere Kenntnis der Geschäftsvorgänge der Degesch, als sie die Angeklagten jemals besessen haben, nicht ausreicht, um auf eine positive Kenntnis des verbrecherischen Zyklon-Missbrauchs durch die SS zu schliessen. Der Einzige, der innerhalb der Degesch eine, wenn auch nur begrenzte Kenntnis davon hatte, dass die SS Zyklon zur Tötung von Menschen gebrauchte, war Dr. Peters, der damalige Geschäftsführer der Degesch. Aber auch Dr. Peters verdankte diese Kenntnis keinesfalls seinem Einblick in die Einzelheiten des Zyklon-Geschäftes, sondern lediglich dem Umstand, dass er von SS-Obersturmführer Gerstein in beschränktem Umfang über Tötungen durch Zyklon unterrichtet worden war..

(Vernehmung Peters Prot.e.S.10530/36 d.S.10669/74).

Dr. Peters war infolgedessen die einzige Person, von der die Angeklagten über den Verwendungszweck der Lieferungen reizstofflosen Zyklons an Gerstein et. was hätten erfahren können. Dies ist nicht geschehen. Zwischen den Angeklagten und Dr. O Peters bestanden so gut wie keine persönlichen Beziehungen..

(Vernehmung Peters Prot.e.S. 10529 d.S.10 668
" " " " e.S. 10474 d.S.10 611).

Dr. Peters war ausserdem durch strengste Geheimhaltungspflicht gebunden, mit keinem Menschen über das ihm von Gerstein anvertraute Geheimnis zu sprechen.

(Vernehmung Peters Prot.e.S. 10531 d.S.10670).

Dr. Peters hat diese Geheimhaltungspflicht auf das Pünktlichste befolgt und von dem ihm mitgeteilten Ver-

wendungszweck

wendungszweck der Zyklonlieferungen niemand - nicht einmal seinen engsten Mitarbeitern in der Degesch - Kenntnis gegeben.

(Vernehmung Peters Prot. e. S. 10536/37/38
d. S. 10675/76/80).

- c) Art und Umfang der Unterrichtung der Mitglieder des Verwaltungsausschusses der Degesch durch Geschäftsberichte und monatliche Umsatzmeldungen konnte keine Kenntnis verdächtigter Einzelheiten der Degesch-Geschäftsführung vermitteln.

Die Anklage behauptet ferner, dass die Mitglieder des Verwaltungsausschusses von den direkten Lieferungen reizstofflosen Zyklons Kenntnis erhalten hätten, durch die regelmässige Uebersendung von Monatsberichten, Vierteljahresberichten und Jahresberichten der Degesch.

Diese Darstellung ist falsch, Die I.G. hat nur Jahresberichte, jedoch keine Vierteljahresberichte und auch keine Monatsberichte erhalten.

(Exh. Degesch Nr. 33 Dok. Nr. 27 Bd. Deg. II S. 33
Vernehmung Peters Prot. e. S. 10 629 d. S. 10 772
" M Ann " " 10470 d. S. 10 606

Ausser den Jahresberichten erhielt die Verkaufsgemeinschaft Bayer in Leverkusen nur noch monatliche Umsatzmeldungen, die lediglich die nackten Umsatzziffern der einzelnen Degesch-Produkte enthielten.

(Exh. Degesch Nr. 22 Dok. Nr. 26 Bd. Deg. I S. 74-95
" " " 33 " " 27 " " II S. 34
" " " 36 " " 39 " " II S. 40).

Die als Informationsquelle ueber den Geschäftsablauf der Degesch demnach allein uebrigbleibenden Jahresberichte enthalten nur eine Darstellung der Gesamtgeschäftsentwicklung, jedoch keine Angaben ueber einzelne

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einzelne Geschäfte. Auf ihnen ergibt sich infolgedessen nichts ueber die direkten Lieferungen reizstofflosen Zyklons.

(Exh. Degesch Nr. 24 Dok.Nr.19 Bd.Deg.II S.1-7).

Ebenso unrichtig ist auch die Behauptung der Anklage, aus den jaehrlichen Geschäftsberichten seien die Hauptabnehmer des Zyklon ersichtlich. Nicht ein einziger Geschäftsbericht aus den Jahren 1939 - 1944 enthaelt Angaben dieser Art.

(Exh. Degesch Nr. 56	Dok.Nr. 65	Bd. III	S. 1
" " " 57	" " 66	" " "	18
" " " 58	" " 67	" " "	34
" " " 59	" " 68	" " "	50

Ankl. Exh. Nr. 1773 Dok. NI 9093 Bd. 82 e. S. 191).

Es werden lediglich die Gesamtabsatzziffern fuer Zyklon, unterteilt nach Inlands- und Auslandsabsatz, mitgeteilt. Aus diesen Ziffern ergibt sich nicht mehr als eine allgemeine Steigerung des Zyklonabsatzes waehrend des Krieges.

(Exh. Degesch Nr. 24 Dok.Nr. 19 Bd. Deg. II S. 2-7).

SS-Stellen und KZ's werden in einzelnen Geschäftsberichten erwaeht, aber nur im Zusammenhang mit der Einrichtung von Entlausungskammern. Man konnte hieraus auf gewisse Zyklon-Lieferungen schliessen, jedoch war es voellig unmoeglich, aus diesen Mitteilungen irgendwelche Rueckschluesse auf die Groesse dieser Lieferungen zu ziehen.

(Exh. Degesch Nr. 27 Dok.Nr. 23 Bd. Deg. II S. 14-16 .

Vernehmung Peters Prot. e. S. 10 631 u. S. 10 775). Die Geschäftsberichte gingen auch regelmassig erst ein halbes Jahr nach Schluss des Berichtsjahres bei d. I. G. ein.

(Exh. Degesch Nr. 24 Dok.Nr. 19 Bd. Deg. II S. 1).
Der

Der Bericht fuer 1943 ging sogar erst im Februar 1945

(Exh. Degesch Nr. 24 Dok. Nr. 19 Bd. Deg. II S. 1
 " " " 25 " " 24 " " " 9
 " " " 26 " " 25 " " " 11).

Angaben ueber die einzelnen Abnehmer der Zyklon-
 lieferungen sowie ueber deren Groessenordnung wurden
 auch nicht in muendlicher Form bei den Gesellschafter-
 versammlungen oder den Sitzungen des Verwaltungsausschus-
 ses gemacht.

(Exh. Degesch Nr. 32 Dok. Nr. 56 Bd. Deg. II S. 32
 Vernehmung Peters Prot. e. S. 10539/40, 10 634/35
 d. S. 10 678, 10 777).

Da die letzte Sitzung des Verwaltungsausschusses
 im Jahre 1940

(Vernehmung Peters Prot. e. S. 10639 D. S. 10 777)

und die letzte Gesellschafterversammlung im Jahre 1942

(Exh. Degesch Nr. 36 Dok. Deg. Nr. 39 Bd. II S. 40)

stattfanden, entfacht von vornherein selbst die theo-
 retische Moeglichkeit, dass die erst Juni 1943 beginnen
 den Gerstein-Lieferungen muendlich besprochen wurden.

(Exh. 1789 Dok. NI 7278 Bd. 83 S. 10
 " Degesch Nr. 18 Dok. Nr. 14 Bd. Deg. I S. 54
 " " " 32 " " 56 " " IIS. 30).

Ausserdem steht damit fest, dass waehrend des ganzen Zeit-
 raums, in den der Zyklon-Missbrauch faellt, nur eine
 einzige Zusammenkunft der Degesch-Gesellschafter statt-
 fand, naemlich die letzte Gesellschafterversammlung
 vom 4. September 1942.

(Exh. Degesch Nr. 21 Dok. Deg. Nr. 15 Bd. I S. 71).

- d) Die Steigerung des Zyklonabsatzes während des Krieges war eine normale Entwicklung, die keinen Verdacht wecken konnte.

Das Einzige, was den Mitgliedern des Verwaltungsausschusses bezüglich des Zyklon-Geschäftes bekannt war, war also die starke Steigerung des Absatzes des Zyklons. Die Prosecution behauptet nun, diese Umsatzsteigerung habe bei den Angeklagten Verdacht erregen müssen. Diese wird widerlegt zunächst durch die Tatsache, dass die Steigerung des Auslandsabsatzes zwischen 1939 und 1943 noch stärker ist, als die Absatzsteigerung im Inland.

(Vernehmung Rauscher Prot. e. S. 10560, 69

Exh. Degesch Nr. 49	Dok. Nr. 70	(Skizze)	
" " " 50	" " 71	" "	
" " " 56	" " 65	Bd. Deg. Nr. III	S. 1
" " " 57	" " 66	" " "	" 1
" " " 58	" " 67	" " "	" 3
" " " 59	" " 68	" " "	" 50

Ankl. Exh. 1773 Dok. NI 9093 Bd. 82 e. S. 137).

Gerade ein Vergleich des Auslandsabsatzes mit dem Inlandsabsatz, musste also den Mitgliedern des Verwaltungsausschusses die Gesamtabsatzentwicklung als eine natürliche Folge des Krieges erscheinen lassen, was sie auch tatsächlich war.

(Exh. Degesch Nr. 29 Dok. Nr. 20a Bd. Deg. II S. 20/21
" " " 31 " " 34 " " " II S. 26

Vernehmung Rauscher Prot. e. S. 10560, d. S. 10 700).

Die ungeheuere Steigerung des Bedarfes an wirksamen Entwesungsmitteln liess auch den Bedarf an anderen Entwesungsmitteln erheblich steigen. Einem Bedarf an Entwesungsmitteln fuer 30 - 40 Mill. cbm in dem ersten Kriegsjahr stand ein solcher fuer 130 Mill. cbm Raum in den Jahren 1943/44 gegenüber.
(Exh. Degesch Nr. 46 Dok. Nr. 21 Bd. Deg. II S. 53).

Es musstendohier sogar Behelfsentwesungsmittel in ganz ausserordentlichem Umfang herangezogen werden.

(Exh. Degesch Nr. 32 Dok. Nr. 56 Bd. Deg. II S. 32)
 " " " 36 " " 39 " " II S. 41

Vernehmung Schlosser Prot. e. S. 10 514 d. S. 10 649
 " Peters " " 10 537 d. S. 10 676
 " Rauscher " " 10 561 d. S. 10 701).

Ferner wies auch das eigene in der gasfoermigen Phase wirkende Entwesungsmittel Diametan der I.G. eine gewaltige Umsatzsteigerung auf, die die des Zyklons sogar noch weit uebertrag.

(Exh. Degesch Nr. 28 Dok. Nr. 20 Bd. Deg. II S. 19)

All dies war die Folge der Menschenanhaeufungen, Massenbewegungen und nicht zuletzt des Hereinstroemens von Menschen aus den stark verlausten Gebieten des europaeischen Ostens und Suedostens. Die mit der Verlausung verbundene Fleckfiebergefahr erforderte energische Bekaeempfung. Es ist die natuerlichste Sache der Welt, wenn der Absatz des wirksamsten Fleckfieberbekaeempfungsmittels infolgedessen stieg.

(Exh. Degesch Nr. 30 Dok. Nr. 33 Bd. Deg. II S. 23)

Vernehmung Rauscher Prot. e. S. 10561 D. S. 10 701).

Zufolge dieser Verhaeltnisse war es sogar unmoeglich, die auch im Kriege stark gestiegenen Zyklonforderungen des Auslands in vollem Umfang zu befriedigen.

(Vernehmung Rauscher Prot. e. S. 10 561 d. S. 10701/2)

Die Prosecution weist demgegenueber auf die Tatsache hin, dass der Zyklon-Absatz im Jahre 1941 stark zurueckging, obwohl im damaligen Zeitpunkt die deutschen Armeen tief in Russland standen, was eine erhebliche Zunahme der Verlausung und damit eine vermehrte Fleckfiebergefahr zur Folge hatte. Sie bringt dann das

starke

starke Wiederansteigen des Zyklon-Absatzes in den Jahren 1942 und 1943 mit den Vergasungen in Auschwitz in Verbindung.

Der Ausgangspunkt dieser Ueberlegung ist falsch. Der Rueckgang des Zyklonabsatzes im Jahre 1941 erklrte sich zwanglos aus der Gesamtentwicklung. Zwar hatte der Ostkrieg (Mitte 1941) begonnen. Aber der hierdurch geweckte Bedarf an Entlausungsmitteln kam erst im folgenden Jahr zur Auswirkung.

(Vernehmung Rauscher Prot.e.S. 10567 d.S.10706).

Dies ergibt sich auch aus dem Geschftsbericht fuer 1941, in dem es heist:

" Die Zyklonumstze, die 1940 in Anbetracht der uns in Elsass-Lothringen und im besetzten Frankreich gestellten besonderen Aufgaben eine Rekordhoehe erreicht hatten, gingen im Berichtsjahr wieder etwas zurueck, da die fuer die Ostgebiete sich ergebenden Anforderungen sich noch wenig auswirkten."

(Exh.Degesch Nr.58 Dok.Nr.67 Bd.Deg.III S.34)

Die Kenntnis der aus den Geschftsberichten und den monatlichen Umsatzmeldungen ersichtlichen Entwicklung des Zyklon-Umsatzes konnte infolgedessen niemals zu der Annahme oder auch nur zu dem Verdacht fuehren, dass Zyklon zu Straftaten missbraucht wurde.

a.) Die Steigerung des Zyklonabsatzes waehrend des Krieges kann ueberhaupt nicht auf den Zyklonmissbrauch der SS zurueckzufuehren sein.

Die Prosecution hat die geradezu absurde Idee vertreten, die Steigerung des Zyklonabsatzes sei auf die Verwendung dieses Gases zu Massentoeutungen zurueckzufuehren.

Der Zyklonbedarf bei Toetung warmbluetiger
Lebewesen

Lebewesen -- also auch bei Toetung von Menschen -- ist minimal, Er faellt, selbst wenn Millionen Menschen mit Zyklon getoetet werden, mengenmaessig ueberhaupt kaum ins Gewicht, wie sich aus dem Affidavit Rauscher

(Exh. Degesch Nr. 64 Dok. Nr. 74 Bd. Deg. III S. 59),
den Vernehmungen Dr. Rauscher

(Prot. e. S. 10 564 d. S. 10 704/5)

und der Vernehmung Dr. Heerdt

(Prot. e. S. 10 435 d. S. 10 622)

ergibt.

Die Gesamtlieferungen an die Waffen-SS einschliesslich der Konzentrationslager betragen durchschnittlich in den Jahren von 1941 bis 1944 etwa 1/10 bis 1/15 des Gesamtabsatzes an Zyklon. . .

(Vernehmung Peters, Prot. e. S. 10 538 d. S. 10 676).

Diese Prozentzahl der SS-Lieferungen (in der saemtliche Lieferungen an KZ's enthalten sind) widerlegt eindeutig die Behauptung der Anklage, dass Ansteigen des Zyklonabsatzes in den Jahren 1942, 1943 sei auf den Zyklonmissbrauch im KZ Auschwitz zurueckzufuehren. Von dem von 180 to im Jahre 1939

(Exh. Degesch Nr. 75 Dok. Nr. 65 Bd. Deg. III S. 9)
auf 411 to im Jahre 1943

(Exh. Degesch Nr. 78 Dok. Nr. 68 Bd. Deg. III S. 55)
gestiegenen Zyklonabsatz erhielt die SS 1943 (dem Jahr ihres hoechsten Verbrauchs) nur 50 to. Dabei ist noch zu beruecksichtigen, dass diese Lieferungen an die SS keineswegs vorwiegend zu verbrecherischem Zweck gebraucht wurden, sondern dass bei weitem

der

der grösste Teil dieser Lieferungen der Raumt-
wassung und der Kleiderentlausung gedient hat.

Damit wird aber auch der geradezu infamen
Verdächtigung der Anklage, die I.G. habe bewusst
aus dem systematischen Massenmord unschuldiger Men-
schen ungeheure Gewinne gezogen, die Grundlage ge-
nommen. Sie beruht auch noch in anderer Beziehung
auf einer Entstellung der tatsächlichen Verhältnisse.
Zunächst bedarf es wohl keiner weiteren Betonung
dass fuer die I.G. die Beteiligung an der kleinen
Degesch keine Rolle spielte. Ferner betraegt die
durchschnittliche Rendite der I.G. aus ihrer De-
geschbeteiligung in den Jahren 1942 und 1943 kei-
neswegs, wie die Prosecution behauptet, 200 %, son-
dern nur 21,6 %. Es ist dies eine Rendite, die auch
schon in den Jahren 1937 und 1938 erzielt wurde.
Wenn die Prosecution eine Rendite von 200 % berech-
net, so stellt sie die Rechnung auf das Nominal-
Kapital ab, laesst jedoch bewusst die Tatsache un-
berücksichtigt, dass die I.G. fuer den Erwerb von
nominell RM 42.500.-- Degesch-Geschäftsanteile
de facto RM 392 500.-- gezahlt hat.

(Exh. Degesch Nr. 7 Dok. Nr. 5 Bd. Deg. I S. 20
" " " 8 " " 17 " " I S. 21)

und dass die I. G. ihre Erzeugnisse an die Degesch
zum Einstandspreis lieferte.

(Exh. Degesch Nr. 9 Dok. Nr. 17a Deg. Bd. I S. 23-26)

Ferner muessen auch noch die ganz erheblichen Vor-
kosten der Entwicklung der einzelnen Produkte in
Rechnung gestellt werden.

(Exh. Degesch Nr. 32 Dok. Nr. 56 Bd. Deg. Nr. 2 S. 28/29)

C. DIE ANGEKLAGTEN VERWALTUNGS-AUSSCHUSSMITGLIEDER
HATTEN AUCH KEINE AUS ALLGEMEINEN QUELLEN
STAMMENDE KENNNTNIS VON DEN MASSENVERGASUNGEN

Es bleibt jetzt nur noch die Frage zu prüfen ob nicht die Angeklagten aus allgemeinen, ausserhalb ihrer Degesch-Beteiligung liegenden Informationsquellen von dem Kenntnis hatten, was in Auschwitz mit einem Teil des von der Degesch stammenden Zyklons geschah.

- a) Den Angeklagten sind die ausländischen Veröffentlichungen über die Massenvergasungen während des Krieges nicht zur Kenntnis gekommen.

Die Angeklagten kannten keine der ausländischen Veröffentlichungen über das Massenausrottungsprogramm, auf die sich die Anklage beruft.

(Vernehmung Mann Prot.e.S.10 612/13 d.S.10755/56)

Das ist nicht weiter verwunderlich, denn diese Veröffentlichungen haben sogar in neutralen Ländern nicht die Verbreitung gefunden, die sie eigentlich verdient hätten. Der Zeuge Struss, der bei seinem Aufenthalt in Auschwitz im Jahre 1943 vom Gerüchten über Menschenvergasungen gehört hatte, versuchte durch Mittelsleute in der Schweiz und in Spanien Nacheres zu erfahren. Dies misslang. Daraus ergibt sich, dass auch in diesen beiden nicht kriegsführenden Ländern die von der Anklage erwähnten Veröffentlichungen so gut wie unbekannt blieben.

Man

Man kann eine Reihe von guten Gruenden dafuer anfuehren, warum diese Veroeffentlichungen nicht die erwartete Beachtung fanden. Das letzte Jahrzehnt hatte ueber die europaeischen Laender und insbesondere ueber Deutschland eine Propagandaflut ohnegleichen ergossen. Die dadurch geweckte und immer wieder neu genachzte Skepsis gegenueber Mitteilungen, von denen man auch nur entfernt annehmen konnte, dass sie in den Rahmen des "Psychological warfare" hineingeboerten, kann vielleicht nur der richtig ermessen, der diese Jahre in Europa miterlebt hat. Jedenfalls wurden hierdurch psychologische Widerstaende geweckt, die eine Verbreitung solcher Nachrichten sehr erschwerten, was wiederum dazu fuehrte, dass sie nur einem sehr beschraenkten Kreis von Menschen zur Kenntnis kamen.

Erfahrungen aus dem ersten Weltkrieg bewirkten ebenfalls eine ausserordentlich starke Reserve gegenueber solchen Nachrichten. Die internationale wissenschaftliche Geschichtsforschung war sich schon bald nach dem Ende dieses Krieges darueber einig, dass der groesste Teil der zeitgenoessischen Berichterstattung ueber Kriegsgreuel einer objektiven wissenschaftlichen Nachpruefung nicht standhielt. Dies war eine Erfahrung, die sich dem Gedaechnis der europaeischen Menschen eingenraegt hatte und die in der analogen Situation des zweiten Weltkriegs die Weiterverbreitung solcher Nachrichten ausserordentlich erschwerte. Man

Man darf ferner auch nicht uebersehen, dass es geradezu in der menschlichen Natur liegt, Mitteilun-

gen ueber Verbrechen von so ungeheuerlichem Ausmass, wie sie in Auschwitz veruebt wurden, nur mit aeusserstem Misstrauen zu begegnen. Selbst bei Kenntnis des verbrecherischen Charakters der Nazi-Fuehrung mussten sich gerade nuechtern und empirisch urteilende Menschen sagen, dass hier Anschuldigungen erhoben werden, die jeden durch die Erfahrung erprobten Masstab ueberschreiten und die deshalb keinen Glauben verdienen. Auch dies hat der Verbreitung dieser auslaendischen Veroeffentlichungen geschadet. Sie wurden von denen, an die sie vielleicht zufaelig herandrangen, meistens nicht ernst genommen und infolgedessen nicht weiter verbreitet.

Es kommt natuerlich noch hinzu, dass die Nazi-Diktatur saemtliche "legale" Nachrichtenmittel absolut beherrschte und damit der Verbreitung von Nachrichten aus dem Ausland nur sehr schwer zu ueberwindende Hindernisse in den Weg legte. Wirkunsvoll ergaenzt wurde dieses System der Nachrichtenkontrolle durch eine heimlich gelenkte Fluesterpropaganda, deren Ziel es war, durch offensichtliche falsche Geruechte, die als solche zu erkennen waren, allen unguenstigen Nachrichten aus dem Ausland ueber Deutschland den Kredit der Glaubwuerdigkeit zu nehmen und dadurch ihre Weiterverbreitung von vornherein zu unterbinden.

Im Endergebnis wirkte sich das Zusammentreffen dieser Umstaende dahin aus, dass nur ein verschwindend kleiner Personenkreis in Deutschland von den Mitteil-ungen auslaendischer, besonders amerikanischer

amerikanischen Stellen Kenntnis erhielt. Es musste
Es musste eine ausserordentliche Haufung von glueck-
lichen Zufaelen vorliegen, wenn sie doch einmal
einen Deutschen erreichten.

So hat der Zeuge Rauscher waehrend seines Auf-
enthaltes in der Tuerkei bis zum Jahre 1943 niemals
etwas von Massenvergasungen gehoert, obwohl er auf
eine tuerkische Zeitung abonniert war und haeufig
auch amerikanische Zeitungen las.

(Vernehmung Rauscher Prot.e.S. 10 559 d.S.10 699).
Wie wenig verbreitet die Kenntnis der Massenvergasun-
gen war, ergibt sich auch daraus, dass keiner der
zahlreichen juedischen Freunde und Bekannten des
Zeugen Rauscher in Bulgarien je Befuerchtungen in
dieser Richtung aussprach, Selbst als der zwangsweise
Abtransport der bulgarischen Juden bevorstand.
Man rechnete in diesen Kreisen nur mit einer Ver-
schleppung zur Zwangsarbeit, nicht aber mit einer
planmaessigen Vernichtung.

(Vernehmung Rauscher Prot.e.S.15 559
d.S.10 699).

b.) Die Kenntnis der Tatsache, dass die Juden
verfolgt wurden, bedeutet nicht zugleich
Kenntnis der Massenvernichtung.

Die allgemeine Kenntnis der Angeklagten soll
sich nach Auffassung der Prosecution ferner daraus
ergeben haben, dass die mit der Verfolgung und
schliesslichen Vernichtung der Juden zusammenhaeng-
den Vorgaenge ihrer Natur nach in Deutschland nicht

verborgen

verborgen bleiben konnten und deshalb den Angeklagten zur Kenntnis kommen mussten.

Diese Beweisführung ist nicht schlüssig. Gewiss war es in Deutschland allgemein bekannt, dass die Juden verfolgt wurden. Man wusste, dass ihre bürgerlichen Rechte beschnitten und dass sie der politischen Rechte beraubt waren. Die meisten Deutschen hatten wohl auch selbst Augenzeugen von organisierten Ausschreitungen gegen sie werden müssen.

(Vernehmung Mann Prot.e.S.10477 d.S.10 114).

Man wusste vielleicht auch, dass ein Teil der jüdischen Bevölkerung verschleppt worden war, ohne dass klare Vorstellungen über den Umfang dieser Verschleppungen und das Schicksal der Verschleppten bestanden. Weitgehend bestand die Vorstellung, dass die Juden in geschlossene Siedlungsraume umgesiedelt wurden. Tatsächlich hatte Hitler in einer Rede vom 6.10.1939 unmittelbar nach Beendigung des Krieges gegen Polen konkrete Pläne dieser Art geäußert.

(Vernehmung Heerdt Prot.e.S.10 493/94
d.S.10 631)

Exh. Mann Nr.335 Dok.Nr.461 Nachtr.Bd.3 u.6).

Von einer allgemeinen Kenntnis der Tatsache, dass die Juden unterdrückt, verfolgt und bedroht wurden bis zur Kenntnis der Massenvernichtungen ist aber noch ein weiterer Schritt. Diese Verfolgungen moogen heute als Teile eines gegen die Juden gerichteten Ausrottungsplanes erscheinen. Als solcher waren sie jedoch damals nicht zu erkennen.

Dies

... Dies ist auch die Auffassung des Urteils im Fall III. Obwohl dieses Urteil davon ausgeht, dass die Angeklagten vermoege ihrer amtlichen Stellung als hohe Justizbeamte eine ausserordentlich weitreichende Kenntnis von den Verfolgungsmassnahmen gegen die Juden hatten,

(vergl. Urteil Fall III, e.S. 10 803 ff.,
d.S. 10 781 ff.)

fuehrt es auf Seite 10 931 (engl.) bezueglich des Angeklagten Altstoetter aus:

" Conceeding that the defendant did not know of the ultimate murders in the concentrations-camps and by the Einsatzgruppen "

Dabei handelt es sich bei Altstoetter um einen hohen Regierungsbeamten und SS-Fuehrer, der als solcher zweifellos bessere Informationen und Informationsmoeglichkeiten besass als jeder der Angeklagten, die sie besessen hat, von denen keiner irgendwelche Beziehungen zur SS hatte.

Die von der Anklage im Dokumentenband 39 zusammengetragenen Auszuege aus deutschen Veroeffentlichungen sind dem Angeklagten Mann niemals zur Kenntnis gekommen.

(Vernehmung Mann Prot. e.S. 10 649/50,
d.S. 10 793/94).

Es sei nur bemerkt, dass diese hetzerischen Veroeffentlichungen in der dargebotenen Zusammenstellung leicht zu unrichtigen Schlussfolgerungen ueber das Ausmass der allgemeinen Kenntnis von den Judenverfolgungen in Deutschland fuehren koennen. Man muss dabei aber beruecksichtigen, dass dem Einzelnen zwar vielleicht die eine oder andere dieser Publikationen zur Kenntnis kam, niemals jedoch alle oder auch nur ein

groeserer

groesserer Teil von ihnen. Der aus dem Zusammenwirken dieser Zitate sich ergebende Eindruck hat sich infolgedessen selbst bei einem wohl-belesenen Deutschen niemals bilden koennen.

c.) Die geruechtweise Kenntnis einzelner weniger Personen von den KZ-Greueln kann nicht verallgemeinert werden.

Es soll nicht bestritten werden, dass es in Deutschland einige wenige Menschen gab, die, ohne an den Massenvergasungen selbst beteiligt zu sein, von diesen Kenntnis hatten. Hier haben entweder die oft so verschlungenen Wege des Zufalls oder aber der Zugang zu besonderen Informationsquellen diese Kenntnis vermittelt; die Masse des deutschen Volkes hatte aber keine solchen Informationsquellen.

Der Zufall hat den Zeugen Alfred Zahn im Jahre 1941 oder 1942 zum unfreiwilligen Zeugen einer leise gefuehrten Unterhaltung in der Hamburger S-Bahn werden lassen, in der davon gesprochen wurde, dass

"Jetzt Juden und Schwachsinnige umgebracht" worden seien.

(Vernehmung Zahn Prot.e.S. 5436/38, d.S. 5521/23).
Ein aehnlicher Zufall vermittelte dem Zeugen Struss im Jahre 1943 bei seinem Aufenthalt in Auschwitz eine geruechtweise Kenntnis von Verbrennungen im Auschwitz KZ.

(Vernehmung Struss Prot.e.S. 13 569, 13 573
d.S. 13 765, 13 769).

Eingehendere

Eingehendere Kenntnis von den Menschenvergassungen hatte der Zeuge Diels..

(Ankl.Exh.1761 Dok.NI 11.957 DB 82 e.S.46

Vernehmung Diels Prot.e.S.4426-38, d.S.4443-55)

Diels verdankte diese Kenntnis jedoch nur seinen engen Beziehungen zu fuhrenden Parteikreisen und zum SD.

(Vernehmung Diels Prot.e.S.4429, 4430, 4436
d.S.4446, 4448, 4454).

Der Zeuge hat seine urspuengliche Behauptung in seinem Affidavit,

(Ankl/Exh.1784 Dok.NI 11 396 DB 82 e.S.38.)

dass in Deutschland allgemeine Kenntnis von den Vergassungen mit Zyklon bestand, im Kreuzverhoer stark eingeschaenkt und die Kenntnis dieser Tatsache auf solche Personenkreise beschaenkt, die dem Naziregime ablehnend gegenueberstanden. Er hat dann auf Befragen durch Dr. Heintzeler zugegeben, dass auch noch solche Personenkreise, die weder zu den Nazi-Gegnern noch zu den ausgesprochenen Nazis gehoerten, meistens keine Kenntnis hatten.

(Vernehmung Diels Prot.e.S.4427 d.S.4444).

Tatsaechlich verdankt der Zeuge nach seiner eigenen Aussage seine Kenntnisse einem SD-Mann und nicht etwa seine Verbindung mit Oppositionskreisen.

(Vernehmung Diels Prot.e.S. 4429 d.S. 4446).

Es liegen also sowohl bei den Zeugen Alfred Zahn und Dr. Struss, als auch bei dem Zeugen Diels ausgesprochene Sonderfaelle vor, die nicht zu verallgemeinernden Schlussfolgerungen berechtigen.

d.)

d.) Die angeklagten Mitglieder des Verwaltungsausschusses der Degesch hatten keinerlei Beziehungen zu Auschwitz.

Auch das Bunawerk der I.G. in Auschwitz hat den Angeklagten nicht die von der Anklage behauptete Kenntnis von den Auschwitzer Massenvergasungen vermittelt. Keines der angeklagten Mitglieder des Verwaltungsausschusses der Degesch hatte mit dem Auschwitzer Werk irgendetwas zu tun.

(Vernehmung Mann Prot. e.S. 10 613-14,
d.S. 10 757-58).

Selbst ein ständiger räumlicher Kontakt mit Auschwitz vermittelte regelmässig nur eine Kenntnis von allen möglichen unglaublichen Gerüchten, aber keine Kenntnis der tatsächlichen Vorgänge. In das Reichsgebiet drangen diese Gerüchte nicht.

(Vernehmung Muench Prot. e.S. 14 322/35
d.S. 14 661/81).

Die Kenntnis der angeklagten Mitglieder des Verwaltungsausschusses von dem KZ-Auschwitz unterschied sich nicht von den Vorstellungen, die ein Durchschnittsdeutscher von einem KZ hatte. Daran vermögen auch die Affidavits ehemaliger Kriegsgefangener, die bei der I.G. in Auschwitz beschäftigt waren, nichts zu ändern.

(Trial-Brief d. Prosecution S. 40-51)

Den Angeklagten fehlte jeder räumliche und soziale Kontakt mit dem Auschwitzer Haftlingsmilieu. Ihre führende Stellung in der I.G. bot ihnen also keineswegs, wie die Anklage behauptet, besonders günstige Informationsmöglichkeiten, sondern sie hatten im Gegenteil infolge ihrer Stellung keine Berührung mit jenen

Personen-

Personenkreisen, aus denen die von der Anklage im Trialbrief angeführten Zeugen stammen. Die tausend Kilometer von Auschwitz entfernt lebenden Angeklagten hatten daher wesentlich geringere Chancen, aus diesem Kreis heraus etwas zu erfahren, als viele Durchschnittsdeutsche. Selbst längere Aufenthalte in Auschwitz brachten nicht Kenntnis von den Vorgängen KZ zu vermitteln. Ich erlaube mir insoweit auf die Ausführungen in den Trialbriefen von Dr. Hoffmann und Dr. Seidl zu verweisen.

D. ZUSAMMENFASSUNG UND RECHTLICHE WUERDIGUNG.

Die Angeklagten Mitglieder des Verwaltungsausschusses der Degesch haben also weder bei den Zyklonlieferungen an SS-Stellen mitgewirkt, noch hatten sie von solchen Lieferungen ueberhaupt gewusst. Sie besaßen weder Kenntnis von den Vergasungen noch natuerlich viel weniger davon, dass diese mit Zyklon ausgeführt wurden. Das Zyklongeschäft der Degesch war infolgedessen fuer sie ein voellig unproblematischer, rein wirtschaftlicher Vorgang, der mit den nationalsozialistischen Judenverfolgungen nicht in Verbindung gebracht werden konnte. Die Degesch war ein altes Unternehmen

(Exh. Degesch L Dok. Nr. 1 Bd. Deg. I S. 1),

das schon jahrzehntelang Zyklon produzierte, ohne dass

jemals

jemals ein verbrecherischer Zyklonmissbrauch stattgefunden hatte.

(Vernehmung Dr. Goldschmidt Prot. e.S. 12 875
D.S. 13 078.)

Es bestand infolgedessen fuer diese Angeklagten auch keine Pflicht, aus ihrer normalen, passiven Haltung als Verwaltungsausschussmitglieder her auszutreten und durch aktive Beeinflussung der Geschaeftsfuehrung der Degesch die Zyklonlieferungen an SS-Stellen zu unterbinden.

Wenn die Prosecution den Angeklagten Mann, Hoerlein und Wurster vorwirft, dass die als Mitglieder des Verwaltungsausschusses der Degesch Gelegenheit gehabt haetten, durch Nachforschungen bei dieser Nacheres ueber die Zusammenhaenge zwischen dem Zyklon und den auschwitzner Massenvergasungen zu erfahren, so setzt sie dabei eine Kenntnis oder den Verdacht der Angeklagten voraus, dass solche Vergasungen stattfanden. Beides hat aber niemals bestanden.

Die von der Prosecution zur Unterstuetzung ihrer Theorie angefuehrten praesjudiziellen Feststellungen aus der Nuernberger Rechtsprechung

(Trial-Brief d. Pros. e.S. 57/58)

betreffen Faelle, die gaeenzlich anders gelagert sind. Obwohl es sich um aus dem Zusammenhang herausgerissene Zitate handelt, lassen die unter Ziffer 89/90 und 91 aufgefuehrten Praesjudizien ohne weiteres den grundsuetzlichen Unterschied der dort behandelten Faelle von der Situation, wie sie hier fuer die Angeklagten vorliegt, erkennen.

Der

Der Angeklagte Mann und die uebrigen I.G. Vertreter in der Degesch vertraten die kapitalmaessigen Interessen der I.G. an einem Unternehmen, dessen Erzeugnis Zyklon von der SS zu verbrecherischen Zwecken missbraucht wurde. Die Genannten hatten keinen Einfluss auf diese Lieferungen und kannten weder die Tatsache dieser Lieferungen noch waren ihnen die Auschwitzer Vergasungen und die Rolle, die Zyklon B dabei spielte, bekannt. Sie haben also lediglich an einem ganz normalen wirtschaftlichen Unternehmen teilgenommen, das alteingefuehrt war,

(Exh.Deg.1 Dok.Nr.1 Bd.Deg.1 S. 1)

und ausserdem auch noch unter strengen behoerdlichen Sicherheitsvorschriften stand.

Demgegenueber handelt es sich bei dem unter Ziffer 89/90 des Trialbriefes erwachten Fall um die Durchfuehrung des Hitler'schen Euthanasieprogramms und um Versuche an Menschen unter der Verantwortung des Angeklagten Brandt. Hier bewegte sich das Handeln des Angeklagten Brandt von vornherein auf einer Grenzlinie des Verbrechens, eine Tatsache, die ihn mit der Verantwortung auch fuer solche Handlungen seiner Ausfuehrungsorgane belastet, die nicht zu seiner Kenntniskamen. Ganz aehnlich liegt der unter Ziff. 92 angefuehrte Fall des Angeklagten Mummenthey.

Auch fuer den unter Ziffer 93 zitierten Fall des Angeklagten Funk gilt das Gleiche, obwohl die Kuerze des Zitats dieser Tatsache nicht in Erscheinung treten laesst. Die Feststellungen des IMT Urteils lassen jedoch erkennen, dass Funk seinen Untergebenen die

die Anweisung erteilt hatte, keine unnötigen Fragen nach der Herkunft der von der SS uebergebenen Wertgegenstaende zu stellen. Funk war sich also des verbrecherischen Ursprungs dieser Gegenstaende bewusst, wenn ihm vielleicht auch die naecheren Einzelheiten unbekannt waren. Nur aufgrund dieser Feststellung kommt das IMT Urteil zu dem Ergebnis, dass Funk

" entweder wusste, was in Empfang genommen wurde, oder dass er vorsaeztzlich die Augen vor dem, was geschah, verschloss."

Die saemtlichen von der Anklage angefuehrten Praejudizien ergeben mithin eindeutig, dass ein strafbares Verhalten der angeklagten Mitglieder des Verwaltungsausschusses der Degesch nicht in Betracht kommt.

MICROCOPY

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ROLL

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